



# THE ONLINE TRIAL SKILLS HANDBOOK 2024



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# AUTHORS

## VIETNAMESE EXPERTS

1. Mr. Nguyen Bien Thuy – Justice of the Supreme People’s Court of Vietnam (chief author);
2. Mr. Tran Van Thu, Director of the Department of International Cooperation, Supreme People’s Court of Vietnam;
3. Mr. Nguyen Chi Cong, Deputy Chief Judge of the High People’s Court in Da Nang, Vietnam;
4. Mr. Phung Van Hai, Deputy Chief Judge of the People’s Court of Ho Chi Minh City, Vietnam;
5. Ms. Hoang Thi Song Mai, Head of the Department of Criminal, Administrative, Family and Juvenile Law Research, Department of Legislation and Scientific Management, Supreme People’s Court of Vietnam.

## INTERNATIONAL EXPERTS

1. Ms. Grace Spulak; Senior Court Management Consultant, Court Services Division, National Center for State Courts (U.S.);
2. Ms. Luying Wang, Communication and Project Support Specialist, Bangkok Regional Hub, United Nations Development Programme.

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# FOREWORD

The rapid development of information technology has brought many opportunities to improve the efficiency of national governance and justice enforcement around the world. The fourth industrial revolution, the constant transformation of the technological era, and the digital age have created favorable conditions and profoundly changed the efficiency of the Court's operations. International practice shows that countries with developed science and technology have focused on increasing the application of information technology in judicial activities and achieved great success.

In that context, the Vietnamese Court System has increased the application of information technology, gradually realizing the Party's guidelines and the State's policies on proactively participating in the fourth industrial revolution. By selectively absorbing international experience and making the most of the benefits of information technology, the Court System has been strengthening the construction of e-courts in general and online trials in particular. After the National Assembly issued Resolution No. 33/2021/QH15, dated November 12, 2021, on organizing online trials, the Supreme People's Court presided over and coordinated with relevant agencies to issue Joint Circular No. 05/2021/TTLT-TANDTC-VKSNDTC-BCA-BQP-BTP, dated December 15, 2021, of the Supreme People's Court, the Supreme People's Procuracy, the Ministry of Public Security, the Ministry of National Defense, and the Ministry of Justice, detailing and guiding the implementation of organizing online trials. The Supreme People's Court also issued Decision No. 163/QD-TANDTC, dated June 20, 2024, of the Chief Justice of the Supreme People's Court on guiding, equipping, and installing equipment for organizing online trials for courtrooms of courts at all levels. Practice shows that online trials are a breakthrough in judicial reform of the Court. Therefore, in the coming time, the Court system will continue to promote and improve the efficiency of online trials.

The Online Trial Skills Handbook was created with the hope that it will be used as a handbook to improve the professional skills and abilities of Judges and Court officials during online trials. This is also a document that creates conditions for more convenient procedures, which allow participants in the proceedings to better understand online proceedings at the Court. The Handbook is a document that helps the public learn more specifically about the Court's online trial activities, making the Court system more accessible to the public and increasing the transparency of the proceedings. In addition, the Handbook is a useful resource for lecturers and law students.

The Handbook's content includes instructions on the application of law and skills to resolve various types of cases online and instructions on the work that needs to be done in the process of preparing technical conditions for online trials. In terms of structure, the Handbook is divided into six parts: (1) Some general issues about online trials; (2) Online trials of criminal cases; (3) Online trials of administrative cases; (4) Trials of civil cases; (5) Online sessions to consider and apply administrative measures at the People's Court, such as applying compulsory drug addiction treatment measures for minors; and (6) International experience in online trials.

Given its important nature, purpose, and significance, the Supreme People's Court, especially the authors, have made great efforts to produce this Handbook. The Handbook was completed with technical support from the United Nations Development Program and the US Department of State's Bureau of International Narcotics and Law Enforcement Affairs.

Hopefully, the Online Trial Skills Handbook will meet the requirements of users, especially Judges. With such a wish, the Supreme People's Court looks forward to receiving many comments and contributions to make the Handbook more complete.

Thank you!

**Supreme People's Court**

# PART ONE

## SOME GENERAL CONSIDERATIONS ABOUT ONLINE TRIALS

### LEGAL DOCUMENTS

- Criminal Procedure Code;
- Law on Cyber Security;
- Resolution 33/2021/QH15 of the National Assembly on organizing online court sessions;
- Circular No. 01/2017/TT-TANDTC, dated July 28, 2017, of the Chief Justice of the Supreme People's Court on courtrooms;
- Circular No. 02/2017/TT-TANDTC, dated July 28, 2017, of the Chief Justice of the Supreme People's Court promulgating the regulations on organizing court sessions;
- Ordinance No. 03/2022/UBTVQ15, dated December 13, 2022, of the Standing Committee of the National Assembly on the order and procedures for considering and deciding on the application of administrative handling measures at the People's Court.
- Joint Circular No. 05/2021/TTLT-TANDTC-VKSNDTC-BCA-BQP-BTP of the Supreme People's Court, the Supreme People's Procuracy, the Ministry of Public Security, the Ministry of National Defense, and the Ministry of Justice, dated December 15, 2021, detailing and guiding the implementation of organizing online trials.
- Decision No. 163/QD-TANDTC, dated June 20, 2024, of the Chief Justice of the Supreme People's Court on providing guidance on equipping and installing equipment to serve the organization of online trials for courtrooms of courts at all levels.

### I. Concept of online trial

According to Clause 2, Article 1 of Resolution 33/2021/QH15, dated November 12, 2021, of the National Assembly, "An online trial is a trial held in a courtroom, using electronic devices connected to each other through the network environment, allowing defendants, victims, litigants, and other participants in the proceedings to attend the trial at a location outside the courtroom as decided by the Court, but still ensuring direct monitoring of full images, sounds, and participation in the proceedings and procedures of the trial by word of mouth, continuous and public proceedings, at the same time."

Online trials have the following characteristics:

Firstly, online trials do not require the Trial Panel to be in direct contact with the trial participants, and therefore, they do not need to be present in the courtroom.

Secondly, online trials must ensure interaction between trial participants and between litigants and participants in the trial process; ensure compliance with regulations on trial orders and procedures by participants in online trials; protect the duties, powers, and relationships between agencies conducting proceedings and the duties, powers and responsibilities of competent persons conducting proceedings; and protect and enforce the rights and obligations of participants agencies, organizations and individuals in proceedings.

Thirdly, the software for organizing online trials must allow the court to manage and store data

on the online trial process on the system - especially case files, court minutes, deliberation minutes, judgments, and online trial plans - according to the procedures and retention periods of the Law on Archives and current regulations.

Fourthly, the software for organizing online trials must have the function of helping court officials perform procedures at the court session while allowing all participants in the trial to be in the same trial space through video channels, audio channels, text channels (sharing computer screens), and transferring online trial documents to participants in the trial, helping participants in the trial interact in real-time in the same trial space.

Fifthly, the information technology infrastructure serving the management and organization of online trials must meet the requirements for Internet connection and connection devices, meaning computers and terminals with appropriate configurations to install the online trial software system, and ensure that participants in the trial can access and use the functions of the online trial software system to carry out trial procedures and check and evaluate the quality of online trials. The organization of online trials must comply with regulations on information security, data, and personal information security.

## **II. Online trial preparation plan**

- ❖ Prepare a sample Plan for organizing an online trial according to the form in Appendix 1.
- ❖ Issue a notice of online trial.
- ❖ Make a decision to bring the case to online trial: The current decision form has additional information about online trial (number of component connection points, etc....).

## **III. Some general requirements**

### **1. General requirements on techniques and technology**

- Online trial equipment must fully comply with the instructions on equipment and installation of equipment serving the organization of online trial in the courtrooms of the Courts at all levels, issued together with Decision No. 163/QĐ-TANDTC, dated June 20, 2024, of the Chief Justice of the Supreme People's Court.

- Technical, technological, operational, and management requirements for the online court system must ensure the safety and security of information and data according to regulations of the Supreme People's Court, except for the cases specified in Clause 2, Article 5 of Circular No. 01/2017/TT-TANDTC, dated July 28, 2017, of the Chief Justice of the Supreme People's Court.

- Technical, technological, operational, and management requirements for the online court system at the detention facility must ensure the safety and security of information and data according to the regulations of the Ministry of Public Security and the Ministry of National Defense. This is a very important requirement for an online court because all major activities of the court take place in the network environment and are easily exposed and leaked if there are no security measures.

### **2. Central connection point**

- Online court sessions must have a central courtroom, called the central connection point, and component connection points according to the provisions of Circular 01/2017/TANDTC, dated July 28, 2017, of the Chief Justice of the Supreme People's Court, regulating courtrooms.

- The central connection point (or Central Courtroom) is located at the location decided by the Court that accepts the case and chooses the online court session.



### **3. Component connection points**

- Component connection points are the space for organizing trial sessions organized or accepted by the Court, with the participation of the subjects. (Subjects participating in the proceedings are the defendant, the defense counsel, the victim, the protector of the legitimate rights and interests of the victim, the litigant, and other participants in the proceedings such as officers and soldiers of the detention facility, and judicial support police).

- A trial can only connect to a maximum of 3 component connection points. For criminal trials where the component connection points are located at the detention facility, the requirements specified in Circular No. 01/2017/TT-TANDTC, dated July 28, 2017, of the Chief Justice of the Supreme People's Court, must be met in courtrooms. In case there are other participants in the proceedings, a suitable location must be arranged, and must ensure solemnity and safety.

### **4. Arrangement of positions for persons under 18 years old**

For defendants under 18 years old, the arrangement of positions for the defendant, representative, and defense attorney must comply with the regulations on courtrooms and handling of cases under the jurisdiction of the Family and Juvenile Court.

### **5. Checking technical connections between the connection points**

- Within 3 days from the date of receipt of the decision to bring the case to trial, if the detention facility finds that it is impossible to extract the defendant to the location decided by the Court, it must submit a written request to the Court for permission to organize a component connection point at its detention facility. The request must clearly state the reason for not being able to extract the defendant to the location decided by the Court.

- If the component connection point is organized at the detention facility, the detention facility shall coordinate with the Court to carry out tasks, such as: (1) receiving an account and password to connect to the online system at the central connection point; (2) checking the capabilities of the facility's technology; and (3) preparing conditions for successful test connection with the central connection point at least 1 day before the online trial takes place; organizing connection with the central connection point and other component connection points to ensure that all connection points can see each other's images and hear each other's sounds clearly; and setting the sound on and off functions to ready mode at least 1 hour before the online trial takes place.

### **6. Coordination between agencies**

- Coordinate with the Court in organizing online court sessions. These are mandatory requirements before online court sessions take place and require synchronous and unified coordination between the Court and the detention facility (where the component connection points are organized). Therefore, it is necessary to study and develop a specific coordination mechanism between the Court and the Police force related to these requirements.

- Contact local authorities for support and facilitation to organize online court sessions promptly and effectively. At the same time, proactively coordinate closely with relevant agencies and units such as the police, detention facilities, Legal Aid Centers, etc. to ensure infrastructure and equipment for organizing online court sessions. Normally, to organize an online criminal trial, the Judge assigned to the case must send a written opinion to the same-level Procuracy on the online trial. To organize a successful online criminal trial, and ensure compliance with legal regulations, it is also necessary to have the coordination of three prosecution agencies, so it is necessary to organize an

interdisciplinary meeting between the three agencies.

## **7. Arrangement of forces to protect the online trial's connection points**

- In case of a request from the Court, the Police force may have to arrange forces to participate in protecting the trial at 4 different locations, including 1 central connection point and no more than 3 component connection points.

- The number of officers and soldiers participating in protecting an online trial will be more than that of a direct trial, so it is necessary to proactively notify in advance and send a trial plan so that the unit assigning officers and soldiers to participate can prepare protection plans.

## **8. Carrying out procedures at the trial**

- If the component connection point of the online trial is located at a detention facility, the Presiding Judge of the trial must request officers and soldiers of the detention facility supporting the trial to carry out a number of procedures to check the presence of the summoned persons and notify the court clerk.

- If the participants in the proceedings at the component connection point provide additional documents and evidence, photocopy and present documents and evidence at the trial to the Trial Panel, and the Prosecutor at the central connection point considers and decides to accept the documents and evidence and make a record according to the provisions of Article 133 and Article 305 of the Criminal Procedure Code, then after the end of the trial, the record with documents and evidence must be immediately transferred to the Judge presiding over the trial.

- In case of an irremediable incident during the online trial, the Trial Panel's decision to suspend the trial must be communicated to the participants at the component connection point. The Presiding Judge of the trial must ask the Technical Department to ensure network information security and safety in accordance with Resolution No. 33/2021/QH15, dated November 12, 2021, and Joint Circular No. 05/2021/TTLT-TANDTC-VKSNDTC- BCA-BQP-BTP:

- Scope of regulation, subjects of application: The Joint Circular details and guides the consideration and decision to open an online trial; requirements for online trials; responsibilities of agencies, organizations, and competent persons in organizing and participating in online trials; preparing online trials; and holding online trials. The Circular applies to prosecution agencies, prosecutors, participants in litigation, and agencies, organizations, and individuals related to online court sessions.

## **9. Consider and decide to open an online trial**

For cases resolved under normal procedures, within 7 days at the latest before deciding to bring the case to trial, the Judge assigned to preside over the trial must consider and resolve as follows:

a) Assess whether the case meets the conditions for organizing an online trial according to the provisions of Clause 1, Article 1 of Resolution No. 33/2021/QH15, dated November 12, 2021, of the National Assembly;

b) Assess the current status of material and technical facilities according to the provisions of Articles 4 and 5 of this Joint Circular;

c) For criminal cases, send a written notice to the competent Procuracy exercising the right to prosecute and supervise the trial to give opinions on opening an online trial;

d) For criminal, civil, and administrative cases where the litigants and victims participating in the proceedings admit that they are eligible for legal aid and do not have the technical or technological

qualifications to participate in online court sessions, the Court shall explain to the litigants and victims that they have the right to request the State Legal Aid Center to consider, accept the case, and support their participation in online court sessions, and at the same time notify the State Legal Aid Center.

## **10. Settlement by simplified procedure**

For cases settled by simplified procedure, within 2 days at the latest, before deciding to bring the case to trial, the Judge assigned to preside over the trial must consider and resolve as follows:

- a) Assess whether the case meets the conditions for organizing an online trial as prescribed in Clause 1, Article 1 of Resolution No. 33/2021/QH15, dated November 12, 2021, of the National Assembly;
- b) Assess the current status of material and technical facilities as prescribed in Articles 4 and 5 of this Joint Circular;
- c) For criminal cases, send a written notice to the competent Procuracy to exercise the right to prosecute and supervise the trial to give opinions on opening an online trial.

## **11. Requirements for the connection points**

The opening of an online trial must be clearly stated in the Decision to bring the case to trial and must specify the central connection point and the number of component connection points.

### **11.1. Central connection point**

The central connection point must be organized in accordance with the provisions of Circular No. 01/2017/TT-TANDTC, dated July 28, 2017, of the Chief Justice of the Supreme People's Court regulating courtrooms and ensuring a number of specific requirements, as follows:

- a) The courtroom is equipped with an online system including electronic equipment and information technology infrastructure separate from other regular information technology equipment of the Court.
- b) The courtroom is equipped with the following equipment for online court sessions: Lighting system; transmission system and network equipment; sound systems such as speakers, microphones, amplifiers, and audio mixers; image display equipment at the central connection point and component connection points of online court sessions; television signal decoding equipment and online television software; camera equipment to record the entire court session; data storage equipment; object projector used to display documents and evidence in court; and power storage device.

### **11.2. Component connection points**

Online court sessions may only connect to a maximum of 3 component connection points and must satisfy the following requirements:

- a) For civil and administrative court sessions, the space at the connection point must be polite, serious, and quiet; the lighting must be appropriate for the space, avoiding backlighting and offensive colors; the images and space around the participants must be fully displayed on the projection screen; and the connection point must have suitable electronic devices to ensure that the transmission of sound and images at the court session are clear and uninterrupted;
- b) For criminal court sessions where a litigant does not participate in the court session at the component connection point located at the detention facility or the central connection point, the component connection point at which that litigant participates must ensure the requirements specified in Point a Clause 2 of this Article;
- c) For criminal court sessions where the component connection point is located at the

detention facility, the requirements specified in Point a Clause 2 of this Article must be ensured. The facility must arrange the national emblem and the witness stand for the defendant in accordance with the provisions of Circular No. 01/2017/TT-TANDTC, dated July 28, 2017, of the Chief Justice of the Supreme People's Court regulating the courtroom. If there are other participants in the proceedings, an appropriate location must be arranged that ensures solemnity and safety. For defendants under 18 years of age, the location arrangement for the defendant, representative, and defense attorney must be in accordance with the provisions of the courtroom and the settlement of cases under the jurisdiction of the Family and Juvenile Court.

**APPENDIX 1**

**PLAN: ORGANIZING ONLINE COURT SESSION**

*According to Resolution No. 33/2021/QH15 dated November 12, 2021 of the 15th National Assembly on organizing online court sessions;*

*According to Joint Circular No. 05/TTLT-TANDTC-VKSNDTC-BCA-BQP-BTP dated December 15, 2021, detailing and guiding the implementation of organizing online court sessions;*

The specialized court and the Department shall develop a plan to organize online court sessions with the following specific contents:

**I. PURPOSE AND REQUIREMENTS**

- To effectively carry out online trial work in accordance with the provisions of Resolution No. 33/2015/QH15 dated November 12, 2021 of the 15th National Assembly; to ensure trial of cases within the time limit prescribed by law; to protect human rights, legitimate rights and interests of organizations and individuals; maintain social order and safety.

- Online trials must comply with the guidance in Joint Circular No. 05/TTLT-TANDTC-VKSNDTC-BCA-BQP-BTP dated December 15, 2021, and guiding documents, ensuring the solemnity of the court session.

**II. IMPLEMENTATION CONTENT**

**1. Organizing ...<sup>1</sup> online court sessions**

The specialized court and the Department found that the cases ...<sup>2</sup> are cases that are allowed to organize online court sessions according to the provisions of Clause 1, Article 1 of Resolution No. 33/2015/QH15 dated November 12, 2021, including:

No.	NO., DATE OF ACCEPTANCE	CASE NAME	JUDGE RESOLVING	POINT ORGANIZING ONLINE COURT SESSION		NOTES
				Quantity	Location	
(1)	(2) <sup>3</sup>	(3) <sup>4</sup>	(4)	(5)	(6)	(7)

<sup>1</sup> Specifically record the number of online court sessions held: For example, 03 online court sessions, 04 online court sessions

<sup>2</sup> Record the type of case for which the online court session is held: For example, civil case, administrative case

<sup>3</sup> Civil case: For example, 123/DSST dated March 12, 2022

Administrative case: For example, 123/HCST dated March 12, 2022

Criminal case: For example, 123/HSST dated March 12, 2022

<sup>4</sup> Civil case: Plaintiff Nguyen Van A - Defendant Nguyen Van B

Administrative case: Plaintiff Nguyen Van A - Defendant People's Committee of District B

Criminal case: Defendant Nguyen Van A was prosecuted for the crime of ...

## PART TWO

### ONLINE TRIAL OF CRIMINAL CASES

#### LEGAL DOCUMENTS

- Criminal Procedure Code;
- Law on Cyber Security;
- Resolution 33/2021/QH15 of the National Assembly on organizing online court sessions;
- Joint Circular No. 05/2021/TTLT-TANDTC-VKSNDTC-BCA-BQP-BTP regulating and guiding the implementation of organizing online court sessions;
- Circular No. 01/2017/TT-TANDTC dated July 28, 2017 of the Chief Justice of the Supreme People's Court on courtrooms;
- Circular No. 02/2017/TT-TANDTC dated July 28, 2017 of the Chief Justice of the Supreme People's Court promulgating regulations on organizing court sessions;
- Ordinance No. 03/2022/UBTVQ15 dated December 13, 2022 of the Standing Committee of the National Assembly on the order and procedures for considering and deciding on the application of administrative measures at the People's Court.
- Joint Circular No. 05/2021/TTLT-TANDTC-VKSNDTC-BCA-BQP-BTP dated December 15, 2021 of the Supreme People's Court, the Supreme People's Procuracy, the Ministry of Public Security, the Ministry of National Defense, and the Ministry of Justice detailing and guiding the implementation of organizing online trials.
- Decision No. 163/QD-TANDTC dated June 20, 2024 of the Chief Justice of the Supreme People's Court on guidance on equipment and installation of equipment for organizing online trials for courtrooms of courts at all levels.

## I. First-instance trial

### 1. Trial preparation

#### 1.1. Consideration and decision to bring the case to online trial

- Within 7 days before deciding to bring the case to trial for cases resolved under normal procedures, and within 2 days for cases resolved under simplified procedures, the Judge assigned to preside over the trial (Judge Presiding over the trial) shall perform the following tasks:

+ Check and review the case to see if it is eligible for an online trial

The case is eligible for an online trial when all of the following conditions are met:

(i) The case has simple details and nature. The defendants are brought to trial for a less serious, serious, or very serious crime, the evidence is clear, and the defendants are being detained or serving their sentences at the same detention facility or at most two places in the same locality.

(ii) The documents and evidence in the case file are clear. Clear evidence means the documents and evidence in the case file create sufficient basis for resolving the case (including cases where the parties can still dispute the obligations and evidence).

(iii) The case does not involve state secrets. State secrets are information with important content, as determined by the head of a competent agency or organization based on the provisions of the Law on Protection of State Secrets, that has not been made public, and if disclosed or lost, could cause harm to the interests of the nation and people. Forms containing state secrets include documents, objects, locations, words, activities, or other forms.

The list of state secrets is established by the Prime Minister, ministers, heads of ministerial-level agencies, Chief of the Central Office, heads of central agencies of socio-political organizations, Secretary General of the National Assembly, Head of the National Office, Head of the Office of the President, Chief Justice of the Supreme People's Court, Chief Prosecutor of the Supreme People's Procuracy, and State Auditor General, according to regulations or criminal cases on one of the crimes against national security specified in Chapter XIII of the Penal Code, criminal cases on one of the crimes of undermining peace, and/or crimes against humanity and war crimes specified in Chapter XXVI of the Penal Code.

+ Assess the current status of facilities and techniques to ensure the organization of online court sessions such as:

Existing electronic devices, and telecommunications networks in use; lighting system, and physical equipment in the courtroom identified as the central point; necessary technical requirements for the arrangement of component connection points. Establish online accounts and passwords for component points to connect to the central point.

+ Decide on the number of component connection points

The Judge presiding over the trial shall consider the number of defendants and litigants participating in the trial, the residence of the litigants, other participants in the proceedings, the nature and extent of the case, and the material conditions to decide on the component connection points, but will not exceed 3 connection points.

For criminal trials where the component connection point is located at a detention facility, the following requirements must be met: the national emblem must be arranged and the witness stand for the defendant must be in accordance with the provisions of Circular No. 01/2017/TT-TANDTC, dated July 28, 2017, of the Chief Justice of the Supreme People's Court regulating the courtroom. In cases where there are other participants in the proceedings, appropriate locations must be arranged to ensure solemnity and safety.

For defendants under 18 years of age, the arrangement of locations for the defendant, representative, and defense attorney must be in accordance with the regulations on friendly courtrooms under the jurisdiction of the Family and Juvenile Court.

For cases where the defendant or victim is eligible for legal aid and does not have the technical or technological qualifications to participate in the online trial, the Court must explain that they have the right to ask the State Legal Aid Center to consider participating in the online trial and notify the State Legal Aid Center in writing, by electronic means, or other appropriate means.

+ Decide on the participants at the connection points

At the central connection point, include the trial panel, the Court Secretary, the Prosecutor assigned to resolve the case, litigants, protectors of the legal rights and interests of litigants, and other participants in the proceedings, if any.

At the component connection point: If the component connection point is located at a detention facility, officers and soldiers of the detention facility supporting the trial shall carry out the following procedures at the request of the Presiding Judge of the trial:

+Check the presence of the summoned persons and notify the Court Secretary.

+If the participants in the proceedings at the component connection point provide additional documents and evidence: photocopy and present the documents and evidence at the trial for the Trial panel and Prosecutor at the central connection point to consider and decide; receive documents and evidence, and make minutes according to the provisions of Article 133 and Article 305 of the Criminal Procedure Code. After the end of the trial, the minutes together with documents and evidence must be immediately transferred to the Presiding Judge of the trial.

In case of an irremediable incident, the Trial Panel's decision to temporarily suspend the trial must be provided to the participants at the component connection point.

+ Decision to bring the case to trial:

The opening of an online trial must be clearly stated in the decision to bring the case to trial, which clearly shows the central connection point and the number and location of the component connection points. The decision to bring the case to trial must comply with form No. 20 issued with Resolution No. 05/2017/NQ-HDTP, dated September 19, 2017, of the Council of Judges of the Supreme People's Court and in Article 1 of the Decision must clearly state the following content:

Location of the trial: + At the central connection point: ..... + At the component connection points: ..... The case is tried online (open or closed trial) from the central connection point with... component connection points.
--

### **1.2. Summoning the litigant and sending the decision to bring the case to trial, the extraction order**

- For the trial to proceed as planned, ensure quality, and comply with the provisions of the Criminal Procedure Code, the Judge presiding over the trial shall carry out the following requirements:

+ The summons and extraction order shall clearly state the point of contact for the defendant and litigant to participate in the trial;

+ The summons and extraction order shall clearly state that the defendant and litigant shall perform the following obligations: (1) Comply with the courtroom regulations; (2) Always keep the camera and microphone on the electronic device turned on; (3) Only speak when requested; (4) Do not create other noise while the electronic device is in the sound mode, affecting the trial; (5) Be properly dressed; (6) Do not stand up or leave during the trial without the permission of the Presiding Judge; (7) Do not take photos, record audio, video, record with sound, distribute documents or distribute account information logged into the online trial system, or broadcast the trial live on the internet; and (8) The parties participating in the online trial must present one of the following identification documents: citizen identification card, passport, etc. for verification. In case the parties authorize another person to participate in the proceedings, the authorized person must also present a written authorization. In addition, the summons may include a notice of violation of obligations when participating in the trial, which may result in a penalty for obstructing the proceedings. Violating the rules of the trial or meeting [is governed by?] (Article 23 of Decree No. 02/2022/UBTVQH15); Obstructing the proceedings (Article 24 of Decree No. 02/2022/UBTVQH15).

### **1.3. Develop a plan to prepare for the online trial**

- The presiding judge of the trial develops a plan to prepare for the online trial to ensure that the trial proceeds smoothly and in accordance with regulations, to anticipate situations that may arise, and to develop solutions to handle them.

- In cases where evidence must be checked and evaluated, attention must be paid to issues related to the security of personal and organizational information. Prepare electronic devices to conduct the checking and evaluation of evidence at the trial.

- The online trial must be recorded with audio and video in the form of electronic data and stored in the case file.

- Estimate and propose the budget for organizing the online trial in accordance with the provisions of law.

#### **1.4. Check the trial connection before the trial takes place**

- At least 1 day before the online trial takes place, the technical department must check and prepare the conditions for a successful trial connection between the central connection point and the component connection points. At least 1 hour before the online trial takes place, the central connection point must complete the connection with the component connection points, ensuring that the connection points can see each other's images and hear each other's sounds clearly and that the audio connection functions are smooth and ready to operate.

- In case the component connection point is organized at a detention facility or a State Legal Aid Center, the Court shall proactively coordinate with these agencies to provide accounts and passwords to connect to the online system at the central connection point.

- In case the component connection point is located at a place arranged by the litigant or the person protecting the litigant's legal rights and interests, the Court shall proactively ask the litigant or the person protecting the litigant's legal rights and interests to coordinate in checking the technical quality of the online system's image and sound signals and connecting the litigant's electronic devices at least 1 hour before the online trial takes place.

## **2. First-instance trial**

### **2.1. Dissemination of court rules**

- Criminal trial rules are mandatory rules of conduct that all subjects present at the trial must comply with, as stipulated in Article 256 of the 2015 Criminal Procedure Code.

- Court rules are an inseparable part of the courtroom rules, so in addition to complying with the court rules, those participating in and attending the trial must also comply with the courtroom rules. Courtroom rules are stipulated in Article 3 of the Courtroom Organization Regulations issued together with Circular No. 02/2017/TT-TANDTC of the Chief Justice of the Supreme People's Court.

### **2.2. Checking the presence of participants in the trial**

- For the trial to proceed as planned, ensure quality, and comply with the provisions of the Criminal Procedure Code, the Judge assigned to preside over the trial must carry out the following requirements:

- + Check the participants in the trial according to the summons of the Court. The Court Secretary checks whether people are present or absent and determines reasons for those absences before the court rules and procedural explanations are given. Then, the Judge presiding over the trial combines re-checking the participants with explaining the rights of the participants.

- + When checking the background of the defendant and the participants in the proceedings, it is necessary to base on the contents of the sample judgment to conduct a full check according to the



guided items. If there is any content that the defendant or the participants in the proceedings do not remember, it must be announced to them and asked for their confirmation.

+ When explaining the rights and obligations of the defendant, it may not be necessary, depending on the specifics of each case, to explain all the rights as prescribed in Clause 2, Clause 3, Article 61 of the Criminal Procedure Code. Instead, the Presiding Judge may only need to explain the rights and obligations of the defendant related to the case. In addition, when disseminating and explaining the rights and obligations of the participants in the proceedings, the Presiding Judge must also disseminate the announcement of the judgment on the Electronic Information Portal of the People's Court according to the provisions of Resolution No. 03/2017/NQ-HDTP, dated March 16, 2017, of the Council of Judges of the Supreme People's Court.

### **2.3. Procedures for starting a trial**

- At an online trial, when the Presiding Judge explains the right to request a change in the person conducting the proceedings or the person participating in the proceedings according to the obligation by announcing the members of the Trial Panel, the Prosecutor, the Court Secretary, the Presiding Judge also introduces the names, positions, and titles of the people (if any) participating in the proceedings according to the obligation such as experts, interpreters, translators, people and asks the participants in the proceedings if anyone requests a change.

- After explaining the rights and obligations to the participants in the proceedings, the Presiding Judge asks the Prosecutor and the participants in the proceedings if anyone requests to summon more witnesses, or bring more documents or evidence for consideration at the trial. If someone requests to summon more witnesses or bring more evidence or documents, then it will be brought up for consideration.

- The Presiding Judge of the trial checks the identity of the trial participants through online comparison of identification documents or through the national population database system.

- At the opening, in addition to disseminating the rights and obligations of the defendants, litigants, and trial participants, the Presiding Judge must also disseminate the following content:

+ The online trial still ensures the order and procedures of criminal proceedings;

+ The legitimate rights and interests of the defendants and litigants at all connection points are still implemented according to the provisions of the Criminal Procedure Code.

- In the procedure for starting the trial, the Presiding Judge must ensure the right to provide documents and evidence, and to request the summoning of witnesses, objects, and documents for examination, and to determine the status of those participating in the proceedings. Documents, evidence provided, additional witnesses summoned, or different opinions on determining a person's eligibility to participate in the proceedings must be publicly examined and clarified by the Trial Council so that it can be handled correctly.

### **2.4. Litigation at the trial**

- The skill of controlling the debate at the first instance of the criminal trial in the online form is extremely important, requiring the Trial Panel, especially the Presiding Judge of the trial, to focus, handle arising situations in a timely and convincing manner, and at the same time comply with the provisions of the law.

- The Presiding Judge is both the person conducting the proceedings and the person controlling the proceedings at the trial. As the person conducting the proceedings, the Presiding Judge must fully and accurately perform the tasks prescribed by the Criminal Procedure Code, and, on behalf of the Trial Panel, announce the decisions that have been passed in the deliberation room as well as in the courtroom.

- After checking the defendant's identity, the presiding judge announces the composition of the participants in the proceedings and explains the rights and obligations of the defendant and other participants in the proceedings at the trial.

- Litigation management skills in the questioning procedure at the trial:

+ Online trials are similar to in-person trials: The Trial Panel must directly determine the circumstances of the case by asking and listening to the opinions of the defendant, the victim, the litigant or their representatives, witnesses, experts, and other participants in the trial; reviewing and examining collected documents and evidence; announcing the minutes, documents, and conducting other procedural activities to examine evidence; listening to the opinions of the Prosecutor, the defender, the protector of the legitimate rights and interests of the victim, the litigant, etc.

+ The questioning stage at the trial is the central stage of the trial. The parties to the proceedings all have the right to question others and examine the evidence and documents, so that on that basis, the Trial Panel, the Prosecutor, and participants in the proceedings, such as the defender and the protector of the rights and interests of the litigant, have the opportunity to examine the evidence. The questioning and answering takes place publicly.

+ To conduct the questioning phase well at the trial, the Presiding Judge and the Trial Panel must not rely on the documents and evidence already in the case file collected by the Investigation Agency and the Procuracy during the investigation and prosecution process but must identify and clarify these documents and evidence by listening to and accurately analyzing the opinions presented by the participants in the proceedings at the trial, especially their participation in the questioning as well as the details and evidence of the defense attorney mentioned at the trial.

+ After the end of the procedural part, the Presiding Judge announces the transition to the questioning part, requesting that the representative of the Procuracy announce the indictment. When presenting the indictment, the Prosecutor may present additional opinions on the indictment. The Trial Panel listens and follows the proceedings at the trial during the questioning by listening to the Prosecutor read the indictment: The Trial Panel should pay attention to the crime, defendant, article, and clause of law that the Procuracy prosecutes, and compare it with the crime, defendant, article, and clause of law proposed in the Investigation Conclusion.

+ The Presiding Judge of the trial asks questions first, then the judge, the jury, the representative of the People's Procuracy, the defense attorney for the defendant, the defense attorney for the victim, and the defense attorney for other participants in the proceedings. The defendant may also be asked questions if he/she requests to ask and is permitted by the presiding judge. If the investigator attends the trial, the investigator must pay attention to the questions of the Trial Panel, the representative of the People's Procuracy, the defense attorney, the person protecting the interests of the litigant, or the defendant. The Presiding Judge of the trial may ask suggestive questions, such as asking the respondent to present the content and developments of the case.

+ Common questions may include questions about documents regarding the defendant's personal information, such as the defendant's personal history, identification card, or fingerprint. requests to look up a copy of a criminal record or a copy of a criminal judgment, or documents related to proving the age of a person under 18 years old, under 16 years old or under 13 years old. Documents on the victim's identity are also often raised at the trial, such as: Has the investigator identified the identity and age of the participants in the proceedings (detainees, defendants, victims, witnesses)? Based on which documents? Why not invite their legal representatives, guardians, and defense attorneys in cases where the law requires it?

+ The Trial Panel allows the parties to present documents and evidence, which will be shown on the screen at the connection points.

+ The Presiding Judge asks questions that are suggestive, not conclusive. For questions related to state secrets, work secrets, investigation secrets, or insulting to human dignity and honor, the judge presiding over the trial must ask the questioner to rephrase the question or ask the respondent not to answer that question.

+ To properly perform the role of the Chief Judge of the trial as the person who conducts the questioning and ensures that the debate takes place during the questioning stage, the Chief Judge of the trial should not ask many questions and only raise issues that ensure coverage, completeness, and comprehensiveness for the Prosecutor and Lawyer or defense attorney to ask. The Prosecutor and Lawyer or defense attorney have the right to present new evidence to prove guilt or innocence.

- Litigation management skills during the debate phase at the trial:

+ To ensure publicity, democracy, strictness, and improve the quality of the online trial, the Trial Panel allows the parties to present documents and evidence. These documents and evidence will be shown on the screen at the connection points. At the end of the questioning, the Presiding Judge of the trial requests the representative of the Procuracy to present the indictment. Normally, the role of the Prosecutor is to defend the prosecution's viewpoint in the indictment. However, there are cases where the Prosecutor withdraws part or all of the prosecution decision because he/she finds the defendant not guilty, or the investigation process has serious violations of the law by the Investigator, such as forcing confessions, coercing confessions, using torture, or the act of falsifying casefiles. If the representative of the Procuracy withdraws part, the Trial Panel will continue to try the case. If the representative of the Procuracy withdraws the entire decision to prosecute, the Trial Panel will consult with the participants in the proceedings before issuing a verdict declaring the defendant not guilty (if there is a basis) or issuing a decision to temporarily suspend the case (if it is found that the withdrawal of the decision to prosecute is groundless) and recommending to the immediate superior Procuracy to withdraw the decision to prosecute. After the representative of the Procuracy has finished presenting the charges, the Presiding Judge of the trial will ask the defendant to present a self-defense statement. If the defendant does not present, the defendant's defense attorney will present a defense statement, after which the defendant adds his/her opinion to the defense attorney's defense statement. The Trial Panel will consider the issues raised by the defendant and the defense attorney, and consider issues such as: What issues do the defendant and the defendant's defense attorney affirm or deny? Who do the defendant and the defendant's defense attorney accuse, and what actions do they accuse during the process of resolving the case? What issues do the defendant and the defendant's defense attorney request the Trial Panel to resolve?

+ After the defendant's self-defense, the defense counsel presents the defense for the defendant. Then the Presiding Judge requests the victim, the legal representative of the victim, or the lawyer defending the victim to present their positions and arguments. If the case is initiated at the request of the victim, these people will present their views before the prosecutor presents the indictment. After the parties have expressed their opinions, the Presiding Judge directs the representative of the Procuracy to respond to the opinions of the parties participating in the litigation, then requests the defendant, the defense counsel, the victim, the person protecting the victim's rights and interests, the person with related rights and obligations, the person protecting the rights and interests of the person with related rights and obligations, the plaintiff, the civil defendant in the criminal case, and the people protecting their rights.

+ To conduct the debate at the trial, the presiding judge needs to pay attention to the following issues:

Is the content of the indictment of the representative of the Procuracy who is prosecuting at the trial based on the evidence, documents, and objects examined at the trial as well as the opinions

of the defense attorney, the defendant, and other participants in the proceedings at the trial? Or is the indictment still based only on the content of the indictment?

If the indictment of the representative of the Procuracy is based on the developments at the trial and there are changes compared to the original indictment, the reason for such changes must be stated. This provision requires the indictment of the Prosecutor to be based on the developments of the trial and requires the Prosecutor to have an objective and honest opinion on the indictment. Reading the prepared indictment in advance is not consistent with the developments of the trial and only shows the subjective will of the Prosecutor to impose on the defendant and other parties. Regardless, whether maintaining or changing the indictment, the content of the indictment must also fully demonstrate the evidence determining guilt and/or innocence; the nature and level of danger to society of the criminal act; the consequences caused by the criminal act; the identity and role of the defendant in the case; the crime, punishment, application of points, clauses, articles of the Penal Code, and aggravating and mitigating circumstances of criminal responsibility; the level of compensation for damages; handling of evidence; judicial measures; and the cause and conditions of the crime and other circumstances of significance to the case. A proposal to convict on the entire indictment or a part of the indictment or to try the defendant on a lesser crime or a lighter penalty must also clearly analyze the reasons in the indictment.

After the representative of the Procuracy has finished presenting the indictment, the presiding judge takes the initiative in deciding which defense counsel will speak first and which defense counsel will speak later if there are multiple defenders in the case. After the defense counsel has finished speaking, the presiding judge should ask the defendant whether he or she agrees with the defense counsel's viewpoint or whether he or she needs to add to his or her defense. If the defendant has additional opinions, the defendant should be allowed to speak, but should not repeat the opinions of the defense attorney. Then, the other participants in the proceedings should be asked to express their opinions on the indictment of the representative of the Procuracy. Therefore, the Presiding Judge must have a firm grasp of the facts that have been questioned to control the debate so that it does not drag on too long while still ensuring the adversarial nature of the trial.

The Presiding Judge is not allowed to limit the debate time but has the right to cut off opinions that are not related to the case or have been mentioned before. If the case has many issues, and many details with different evaluations, the Presiding Judge must pay attention to how many different opinions there are on the issues being debated. For the debate to focus on the core of the case, the presiding judge must ask the debaters to state the issues they disagree with and debate each issue one by one.

In the response section, the presiding judge must pay attention to the response of the representative of the Procuracy. According to the provisions of Article 322 of the Criminal Procedure Code, when the participants in the proceedings have different opinions, the prosecutor must provide arguments, evidence, and documents to respond to each opinion of the defendant, the defense attorney, and other participants in the proceedings at the trial.

If the defense counsel or the person protecting the interests of the litigant makes suggestions for the prosecutor to debate but the prosecutor does not debate, the Presiding Judge must ask the prosecutor to respond to all the opinions of the defense counsel and other participants in the proceedings. If the representative of the Procuracy does not respond, the prosecutor must be asked to clearly state the reason and this must be recorded in the minutes of the trial.

The Presiding Judge must create conditions for the participants in the trial to exercise their right to respond to the opinions of others. The law does not stipulate that a participant in the debate has the right to speak only once for each opinion that he or she disagrees with. However, the Presiding

Judge also has the right to cut off the response when he or she sees that the response is not related to the case or that the participant in the proceedings speaks multiple times on an issue but those statements overlap or overlap with the opinions of others. This prevents unnecessarily prolonging the trial.

During the debate, the Presiding Judge must not make conclusive comments or have conclusive opinions or assessments, of the arguments of the opposing parties or defend the Prosecutor or the debater with the Prosecutor, but must always maintain an objective attitude.

If during the debate, there are issues that need to be clarified or new circumstances are discovered that require a return to the questioning stage, the Trial Panel may at the request of the Prosecutor or the debater, or the Presiding Judge, decide to return to the questioning, after which the debate is resumed as normal. However, to avoid unnecessary prolongation of time, the Presiding Judge may require that the Prosecutor and the debater only debate new issues that arise after further questioning.

## **2.5. Handling of arising situations: Suspension of the trial**

- If before the trial or at the online trial, the online system is interrupted due to a connection error, power outage, or other incident that prevents the trial from continuing, the Trial Panel shall decide to suspend the trial. This is a case where all the conditions as prescribed have been met and a decision has been made to open an online trial, but there is an information technology incident that leads to an interruption of the connection such as flickering images, broken sound, unclear hearing, etc., so the trial cannot continue. The Trial Panel shall decide to suspend the trial and notify the relevant parties. However, there is currently no guidance on how this notification is to be made at the trial where the central connection point is held, including whether the notification should be made verbally or in writing. The only requirement stipulates that "Court officials or officers and soldiers of the detention facility shall notify the participants at the component connection point of the decision to suspend the trial." Clause 1, Article 14 of Joint Circular No. 05/2021/TTLT-VKSNDTC-TANDTC-BCA-BQP-BTP does not stipulate the notification of temporary suspension of the trial to other entities such as the Legal Aid Center in case there is a component connection point at the Legal Aid Center. Therefore, when temporarily suspending the trial, it is necessary to notify relevant entities at the connection points.

- If the trial cannot be held on the date set for reopening, the Court shall issue a decision to postpone the trial. This is a situation that occurs when a criminal case is tried online but there is a previous decision to suspend the trial, and now the conditions are not met, leading to the trial not being reopened online. Clause 1, Article 14 of Joint Circular No. 05/2021/TTLT-VKSNDTC-TANDTC-BCA-BQP-BTP has not stipulated and does not provide specific instructions on the reasons for postponing the trial due to the inability to reorganize. However, these conditions are mainly related to the facilities that do not meet the requirements prescribed at the central connection point such as: Lighting system; transmission system and network equipment; sound system (speaker, microphone, amplifier, audio mixer); image display equipment at the central connection point and the component connection points of the online trial; TV signal decoding equipment; online TV software; camera equipment to record the entire trial proceedings; data storage equipment; object projectors used to display documents and evidence at the trial; or power storage equipment. Or the reason for postponing the trial might involve an inability to meet the requirements to open a component connection point, such as: requirements to ensure a polite, serious, quiet connection point space; lighting suitable for the space, that avoids backlighting and offensive colors; ensuring images and space around participants are fully displayed on the projection screen; and suitable electronic equipment to ensure that the transmission of sound and images at the trial is clear and uninterrupted.

- The court considers and decides whether to reopen the trial online or in person according to the provisions of the law. Thus, within 30 days after the decision to postpone the trial, the Trial Panel considers and decides on the form of reopening the trial.

- When a participant in the proceedings presents additional evidence and documents for consideration that may lead to a change in the crime, an additional crime, or an additional subject, the additional evidence requires an appraisal, and the court cannot provide additional evidence, the Trial Panel will adjourn the trial. This is a case where additional evidence and documents at the trial may fundamentally change the content of the case, leading to a change in the crime, the level of punishment, and the need for appraisal and asset valuation.

The provisions of Clause 2, Article 14 of Joint Circular No. 05/2021/TTLT-TANDTC-VKSNDTC-BCA-BQP-BTP do not mention the form of reorganizing the trial (online or normally) after deciding to adjourn the trial. Therefore, depending on whether the evidence and documents presented by the participant in the proceedings can be used as evidence to change the crime, add a crime, or add a subject, the Court will choose which form.

If the case falls under the category of temporary suspension or return of the case file for further investigation, the trial shall not be postponed. The Trial Panel shall consider and resolve the case according to Clause 6, Article 326 of the Criminal Procedure Code. The Trial Panel shall decide to return the case file to the Procuracy for further investigation or temporarily suspend the case.

### **3. Post-trial work**

- After the Chief Judge of the trial announces the end of the last case in the trial, the Court Secretary at the central connection point reminds the component connection points that the trial has ended.

- The Court Secretary at the central connection point stores the electronic data file, and disconnects the recording devices.

- The Court Secretary at the central connection point disconnects the audio and video connection device and other equipment.

- The detention facility officer at the component connection point disconnects the online court system at the component connection point and manages the defendant according to the regulations of the detention facility.

- Regarding the storage and use of video and audio recordings of online court sessions:

- To protect the legitimate rights and interests of defendants and the personal rights and images of litigants and participants in the proceedings, video and audio recordings of online court sessions will be uniformly managed according to general regulations.

- The minutes of the court session shall clearly state which connection points the court session took place at and the full names of the participants in the proceedings at the component connection points.

The recording of audio and video of online court sessions in the form of electronic data does not affect the preparation of court minutes.

- If a participant in the proceedings requests to see the minutes of the court session, the Court Secretary shall present the minutes of the court session to the requester and carry out other relevant procedures, if any, according to the provisions of the law on litigation;

- The judgment and decision must clearly state which connection points the court session took place at, specifically:

On the dates..... month..... year..... at:  
+ At the central connection point:.....  
+ At the component connection point:.....  
The Court... has conducted an online public first-instance trial of the case  
number:...../...../TLST-.....

**4. Handling situations**

**Case 1:** If the person protecting the legitimate rights and interests of the victim or litigant cannot attend the trial at one of the connection points arranged or approved by the Court, he/she must submit a written request to the Court for permission to participate in the connection point he/she has arranged for himself/herself. The connection point of the person protecting the legitimate rights and interests of the victim or litigant must comply with the provisions of Clause 2, Article 4, Clause 1, Article 5 of Joint Circular No. 05/2021/TTLT-TANDTC-VKSNDTC-BCA-BQP-BTP. Thus, according to this provision, the person protecting the legitimate rights and interests of the victim or litigant has the right to participate in the connection point arranged by himself/herself if he/she meets all the prescribed conditions and is accepted by the Court.

Participants in this connection point will include victims, litigants, and people protecting the legitimate rights and interests of victims and litigants. Separately, during the coordination stage of preparing for the online trial, it is stipulated that the component connection point is located at the place chosen by the litigants or the State Legal Aid Center and accepted by the Court. The Court handling the case will proactively ask the participants in the proceedings or the State Legal Aid Center to coordinate in checking the technical quality and quality of the image and sound signals of the online system and complete the connection no later than 1 hour before the online trial takes place. Thus, there is no provision for the Court to send officials to check the space at the component connection points before the online trial takes place, especially the component connection point located at the place where the person protecting the legitimate rights and interests of victims and litigants arranges for themselves. Consider a situation where the component connection point is arranged by the person protecting the legitimate rights and interests of the victim. When the online trial begins, the litigant with the connection point space does not meet the requirements because there are offensive images or banners with reactionary, distorted content appear. How could this be resolved?

**Solution:** To anticipate the above situation and avoid unfortunate incidents, the Court needs to arrange for officials and civil servants to inspect the space of these component points before and during the online trial, and also monitor and provide support. Otherwise, when the online trial has taken place and the above situation occurs, the Trial Panel must issue a decision to temporarily suspend the trial and notify the participants in the proceedings of this decision.

**Case 2:** For criminal cases, at the trial the litigant presents additional evidence and documents for consideration that may lead to a change in the crime, an additional crime, an additional subject, or the need for an expert examination, and if it is not possible at the trial to provide additional evidence at the component connection point, the Trial Panel will adjourn the trial. However, if the litigant presents additional evidence and documents at the central connection point, it will be easy for the Trial Panel to handle. Consider a situation where the litigant attends the trial at the component connection point organized at the detention facility or the Legal Aid Center and presents evidence and documents. How

will the Trial Panel receive and handle it, especially in the case where the litigant attends the trial at the component connection point that they arranged?

Solution: There must be specific guidance on this situation. This guidance might require that the Trial Council, especially the Judge who presides over the trial, must pay attention to whether these new evidence and documents are made public at the trial, whether they are on the list of state secret documents or not, and whether they are not allowed to be made public or not. If they are state secret documents, the Trial Council will decide to postpone the trial and the Court will choose the option of direct trial.

In cases where the documents are not state secret documents, the Court officials, Legal Aid Center officials, or officers and soldiers of the detention facility will assist in taking pictures of the evidence, scanning the documents, and displaying them on the screen so that the Trial Council has a basis to check, consider, and decide to continue the trial or postpone the trial. It is also necessary to make a record of the receipt of evidence and documents to ensure compliance with regulations.

The Court needs to anticipate that, when litigants participate in the trial at the component connection point that they themselves arrange, they may need to present evidence and documents. Thus, before allowing them to open the component connection point, the Court should require them to prepare sufficient supporting equipment in case they present evidence and documents. Similar to the above-mentioned connection points, the Trial Panel needs to check whether the type of document is public or not. In this case, it is necessary for the Court officials to assist in checking and taking photos of the evidence, scanning the documents, and displaying them on the screen if they are not state secret documents to make a decision on whether to postpone the trial or not. The preparation of the record of receiving evidence and documents must comply with regulations.

**Case 3:** During the trial at the component connection point, the defendant is stressed, has high blood pressure, and cannot continue to participate in the trial.

Resolution: The Trial Council, through the Court official or the officers and soldiers of the detention facility, checks the actual health status of the defendant. If the defendant is not healthy enough to continue participating in the trial, the Trial Council will decide to temporarily suspend the trial. The Court official or the officers and soldiers of the detention facility will notify the defendant and the participants at the component connection point.

**Case 4:** The judge assigned to preside over the trial is announcing the verdict when the connection is lost, or one connection point can hear clearly but another connection point cannot hear clearly or can hear intermittently.

Solution: First of all, to avoid this situation, it is necessary to invest in funding to organize online court sessions, have official and backup technicians to monitor 24/7 when the court session takes place, contact the power company where the connection points are located to avoid power outages during the trial, or prepare backup generators. When the connection is lost, the Trial Council needs to notify the participants of the court session to wait; they need to notify participants at the component connection points by phone. Then, the Trial Council should ask the technician to check the transmission line at the connection points that are having problems in order to reconnect. If the transmission line is reconnected, the judge assigned to preside over the trial will ask, after the verdict is announced, if the participants of the court session heard clearly, if there is any content that is not clear or was not heard clearly at all. This will prevent blame and prevent opinions that the verdict is not in accordance with the provisions of the law.

**Case 5:** The litigant at the component connection point requests to see the court transcript.

Solution: The Presiding Judge asks the clerk at the central connection point to show the court transcript. Suppose the litigant has seen it but still asks to see it again because the screen is



blurry, unclear, or unintelligible. The Trial Panel must contact the component connection point to check the image quality, sound, and sharpness of the projection equipment. The component connection point must have the support of court officials, officials of the Legal Aid Center, or officers and soldiers of the detention facility.

**Case 6:** On the morning of April 5, 2022, the People's Court of District X, Province Y organized an online trial of 5 cases. Accordingly, the central connection point was the People's Court of District X and the component connection point was the detention center of District X. Suppose that during the trial, the Lawyer requested to summon the victim during the online trial.

Resolution: According to the leader of the People's Court of District 1, if a controversial situation arises during the online trial, the trial will continue. If the conflict is clarified at the trial and there is a sufficient basis for conviction, the Trial Panel will pronounce the verdict. Otherwise, the case will be postponed or returned for clarification.

## II. Appellate trial

Generally, the organization of online court sessions at the appellate level is similar to the first instance trial.

In cases where the Court of First Instance has tried the case online, the Judge assigned to resolve the case must, during the preparation period for the appellate trial, still consider and organize the online trial based on the material conditions and nature of the case.

According to the provisions of Article 330 of the Criminal Procedure Code, "Appellate trial is the act of the higher-level Court directly re-trying a case or reviewing a first-instance decision where the first-instance judgment or decision has not yet come into legal effect and is being appealed or protested." The Court of Appeal is the second level of trial, tasked with re-trying cases or reviewing first-instance decisions where the first-instance judgment or decision has not yet come into legal effect and is being appealed or protested. The subjects of the trial of the Court of Appeal are only judgments or decisions of the first instance that have not yet come into legal effect and are being appealed or protested.

According to the provisions of the Criminal Procedure Code:

- The People's Court at the provincial and municipal levels has the authority to hear appeals against judgments and decisions of the People's Court at the district level that have been tried but have not yet come into force and are appealed or protested against. The Military Court at the military zone level hears appeals against cases tried at first instance by the Military Court at the regional level that have not yet come into force and are appealed or protested against.

- The High People's Court has the authority to hear appeals against judgments and decisions of the People's Court at the provincial level that have been tried at first instance but have not yet come into force and are appealed or protested against within the territorial jurisdiction of the appeal or protest.

- To ensure the first-instance and appeal trial regime, the Court of Appeal should examine the legality and basis of the first-instance judgments and decisions within its jurisdiction in order to correct errors of the first-instance level. The appellate trial creates conditions for the Courts of First Instance to uniformly apply the law and is the basis for summarizing trial practices and recommending that superiors issue sub-law documents guiding the application of the law. It is also the basis for recommending that competent authorities appeal according to the procedures of cassation and retrial if deemed necessary.

## **1. Trial preparation**

- Skills to control the debate at the appellate court:

The appellate court is conducted similarly to the first instance court, when the appeal, valid protest, or overdue appeal is accepted. The appellate court is the second level of trial with the task of checking the legality and basis of the first instance judgment. The appellate court includes the procedural part, the questioning part, and the debate part. Therefore, the preparation for the appellate trial is similar to the first instance trial. However, some differences need to be noted when preparing for the appellate trial:

+ In the procedural part, the appellate court only checks the identity of the defendants who have appealed or protested (this matters when there are many defendants at the first instance level but not all of them have appealed or been protested) or the participants in the proceedings who have appealed, such as the victim, the legal representative of the victim, the civil plaintiff, the civil defendant, or the person with rights and obligations related to the case.

+ Before conducting the questioning, a member of the appellate panel will briefly present the content of the case and the decision of the first instance judgment. After presenting the summary of the content of the case, the presiding judge will ask the appellant whether he/she will change, supplement, or withdraw the appeal; if so, the presiding judge will ask the prosecutor to present his/her opinion on the change, supplement, or withdrawal of the appeal. If the Chief Prosecutor appeals, the presiding judge will ask the prosecutor whether he/she will change, supplement, or withdraw the appeal; if so, the presiding judge will ask the defendant and those involved in the appeal to present their opinions on the change, supplement, or withdrawal of the appeal.

+ The questioning at the appellate court mainly focuses on clarifying issues related to the content of the appeal. The Presiding Judge needs to carefully study the content of the appeal to plan the questioning as well as conduct the debate during the questioning phase. The questioning plan will depend on the content of each appeal. It is necessary to consider both the incriminating and exculpatory evidence and pay attention to the details and evidence that have been proven at the Investigation Agency as well as at the first instance trial. At the same time, it is necessary to pay attention to the details that the defendant and the defense attorney have presented to prove the defendant's alibi. The questioning is to clarify the contradictory details and evidence, and clarify the legality of the evidence, the source of the evidence, and the legal value of the evidence.

+ The debate at the appeal court has some differences compared to the first instance trial. Based on the assessment of old evidence and new evidence arising at the appeal court, the prosecutor exercising the right to prosecute at the trial expresses his/her opinion on the legality and basis of the first instance judgment to express his/her opinion on the settlement of the case. As at the first instance level, after the representative of the Procuracy expresses his/her opinion on the settlement of the case, the Presiding Judge must also fulfill his/her responsibility in conducting the debate as analyzed in the first instance trial. If through the debate, there is sufficient basis to affirm that the first instance court's prosecution and trial of the defendant is reasonable, it will be the basis for the appellate panel to reject the appeal. If the interrogation finds that the evidence is unclear, incomplete, or has many contradictions that cannot be resolved at the appeal hearing, the Trial Panel will use that as a basis to annul the first instance judgment for re-investigation and retrial.

## **2. Post-trial work**

Conducted as in the first instance trial.

### **3. Handling situations**

- In case before or during the online trial, the online system is interrupted due to a connection error, power outage, or other incident that prevents the trial from continuing, the Trial Panel shall issue a decision to temporarily suspend the trial. Court officials or officers and soldiers of the detention facility shall notify the participants at the component connection point of the decision to temporarily suspend the trial.

- In case the trial cannot be held on the reopening date, the Court shall issue a decision to postpone the trial. The Court shall consider and decide whether to reopen the trial online or in the usual form according to the provisions of law.

- In criminal cases, if at the trial, the participants in the proceedings present additional evidence or documents for consideration that may lead to a change in the charge, an additional charge, an additional subject, or the need for an expert examination, etc., and if at the trial no additional evidence can be provided, the Trial Panel shall adjourn the trial.

If the case is temporarily suspended or the case file is returned for further investigation, the trial will not be postponed. The Trial Panel shall consider and resolve the case according to the provisions of Clause 6, Article 326 of the Criminal Procedure Code.

## PART THREE

### ONLINE TRIAL OF ADMINISTRATIVE CASES

#### LEGAL DOCUMENTS

- Law on Administrative Procedure
- Law on Protection of State Secrets and related legal documents.
- Resolution 33/2021/QH15 of the National Assembly on organizing online court sessions;
- Ordinance No. 03/2022/UBTVQH15 dated December 13, 2022 of the Standing Committee of the National Assembly on the order and procedures for considering and deciding on the application of administrative measures at the People's Court.
- Joint Circular No. 05/2021/TTLT-TANDTC-VKSNDTC-BCA-BQP-BTP of the Supreme People's Court, the Supreme People's Procuracy, the Ministry of Public Security, the Ministry of National Defense, and the Ministry of Justice dated December 15, 2021 detailing and guiding the implementation of organizing online court sessions.

### I. First Instance Trial

#### 1. Trial Preparation

##### 1.1. Review and Decide to Bring the Case to Online Trial

###### Main Tasks and Skills:

- Within 7 days at the latest, before deciding to bring the case to trial for cases that are resolved under normal procedures, or within 2 days for cases that are resolved under simplified procedures, the Judge assigned to preside over the trial must consider and resolve the following:

+ Check and review the case to see if it is eligible for an online trial

The case is eligible for an online trial when all the following conditions are met:

(1) The case has simple circumstances and nature.

The case has one of the following characteristics: (i) The case meets the conditions for applying the simplified procedure (Article 245 of the Law on Administrative Procedures); or (ii) The administrative case is not eligible for applying the simplified procedure.

A case with simple circumstances and nature is understood to have identified the administrative decision, the administrative act being sued, and the law to be applied.

(2) The documents and evidence in the case file are clear.

Clear evidence means the documents and evidence in the case file ensure sufficient basis to resolve the case (including cases where the parties can still dispute the obligations and evidence); the documents and evidence are submitted, supplemented, and collected in accordance with the provisions of the Law on Administrative Procedures.

(3) The case does not involve state secrets.

See the section on criminal trials, section I.1.

+ Assess the current status of facilities and techniques to ensure the organization of online court sessions

\* Ensure existing electronic devices and telecommunications networks are available for use.

\* Establish online accounts and passwords for component points to connect to the central point.

\* The lighting system and physical equipment in the courtroom are identified as the central point.

\* Necessary technical requirements are in place so that component points can be arranged and secured.

+ Decide on the number of component connection points. The maximum number of component connection points is no more than 3 connection points.

\* To determine the appropriate number of connection points, the Judge must consider the number of parties participating in the trial, the place of residence of the parties, the nature and level of the case, and the physical conditions of the courtroom.

\* In situations where the component connection points are arranged by the parties, the Court must contact the parties in advance to discuss the organization of the online trial and do the following:

Give the parties information about preparing the component connection points, clearly communicating that: (1) The location of the connection point must be polite, serious, and quiet; the lighting must be suitable, avoiding backlighting, and offensive colors; images and space around the participants are fully displayed on the projection screen; the parties must have suitable electronic devices to ensure that the transmission of sound and images at the trial is clear and uninterrupted; (2) The parties commit to cooperate throughout the trial. In case the connection point is arranged at the headquarters of the agency or organization that is the defendant, it is required that the seating position of the parties is not organized in the style of meetings of a directive nature, chairing the meeting to ensure conformity.

\* In case the component connection point is arranged by the person protecting the legal rights and interests of the litigant, there must be a written request to the Court for permission to participate in the trial at the connection point arranged by the Court. If the Court agrees, it will notify the person arranging the connection point in writing as it notified the litigant. If the Court does not agree, it can respond in writing or contact the person by appropriate means so that the person protecting the legal rights and interests of the litigant knows the Court's decision.

\* In case the component connection point is arranged by the Court, the Court needs to contact the People's Court nearest to the litigant to request coordination in organizing an online trial. The written request for coordination in organizing an online trial must include the time of the trial, type of case to be tried, number, full name of the litigant summoned, arrangement of technical support officials at the component connection point, Court officials to guide and check the summoned persons when participating in the trial and other necessary requests (if any).

\* For administrative cases where the plaintiff claims to be eligible for legal aid and does not have the technical or technological qualifications to participate in the online trial, the Court will explain to them that they have the right to request the State Legal Aid Center to consider, accept the case and support their participation in the online trial, and at the same time notify the State Legal Aid Center. Notification to the State Legal Aid Center can be made in writing or by electronic means or other appropriate means.

+ Decide on the participants at the connection points

\* At the central connection point: The Trial Council, the Court Secretary, the Prosecutor assigned to resolve the case, The litigants, the person protecting the legal rights and interests of the litigants, other participants in the proceedings (if any) who choose to participate or are summoned by the Court.

\* At the component connection point: at the place where the litigants or the State Legal Aid Center are located, the participants include the participants in the proceedings (litigants, witnesses, etc.), and the person protecting the legal rights and interests of the litigants (if any).

- Decide to bring the case to trial: The central connection point and the number of component connection points must be clearly stated in the decision to bring the case to trial.

The decision to bring the case to trial must be in compliance with Form No. 16 issued with Resolution No. 02/2017/NQ-HDTP dated January 13, 2017, of the Council of Judges of the Supreme People's Court and must clearly state the following content in Section 1 of the Decision:

Location of the trial:  
+ At the central connection point:.....  
+ At the component connection points:.....  
The case is tried online (open or closed trial) from the central connection point with....component connection points.

### **1.2. Summoning the litigant and sending the decision to bring the case to trial**

#### **Main tasks and implementation skills:**

- For the trial to proceed as planned, ensure quality, and comply with the provisions of the Law on Administrative Procedures, the Judge when summoning the litigant must ensure:

+ The summons clearly states the meeting point where the litigant must go to attend the trial;

+ The summons clearly states that the litigant must perform the following obligations: (1) Comply with the courtroom regulations; (2) Always keep the camera on and microphone operational on the litigant's electronic device and only speak when requested; (3) Do not create other noise while the microphone is on affecting the trial; (4) The litigant attending the trial must wear formal attire; must not stand up or leave during the trial without permission from the presiding judge; must not take photos, record audio, video, record with sound, distribute documents or distribute account information, or broadcast the trial live on the internet; (5) The litigant participating in the online trial must present one of the following identification documents (such as identity card, citizen identification card) for verification. In case the litigant authorizes another person to participate in the proceedings, the authorized person must also present a written authorization.

- The summons may include additional content about violations of obligations when participating in the trial, which may result in penalties for obstructing the proceedings under the following laws:

+ Violating the rules of the trial or meeting (Article 23 of Decree No. 02/2022/UBTVQH15).

+ Obstructing the proceedings (Article 24 of Decree No. 02/2022/UBTVQH15).

### **1.3. Develop a plan to prepare for an online trial**

#### **Main tasks and implementation skills:**

- Judges need to develop a plan to prepare for an online trial to ensure that the trial goes smoothly, in accordance with regulations, anticipate situations that may arise, and solutions to handle them.

- In cases where evidence must be made public: pay attention to issues related to the confidentiality of personal and organizational information; prepare electronic devices ready to publicly disclose evidence at the trial.

- Online trials must be recorded with sound in the form of electronic data.

-Judges must estimate and propose funding for organizing online trials in accordance with the provisions of the law.

#### **1.4. Test connection before the trial takes place**

**Main tasks and skills to perform:** See online trial of criminal cases section I. 1 (1.4).

## **2. First instance trial**

### **2.1. Dissemination of court rules**

**Main tasks and skills to perform:**

- The court clerk shall disseminate the court rules in accordance with Article 167 of the Law on Administrative Procedures.

- Disseminate additional content about the requirements for participants in the court session at the component connection point as follows:

+ Always keep the camera and microphone on and only speak when requested;

+ Do not create noise while the microphone is on affecting the court session;

+ Do not take photos, record audio, or video, record with sound, disseminate documents or disseminate account information to log into the online trial system, or broadcast the court session live on cyberspace;

+ If you violate your obligations when participating in the court session at the component connection point, you may be punished for obstructing the proceedings as in the case of a litigant participating at the central connection point.

### **2.2. Checking the presence of participants in the trial**

**Main tasks and implementation skills:**

- The Court Secretary checks the presence of all participants in the proceedings at the points summoned by the Court from the central point to the component points.

- The Court Secretary makes a list of participants in the proceedings at the points before checking, to ensure that no participants are missed.

### **2.3. Procedures for starting a trial**

**Main tasks and implementation skills:**

- Implement according to the provisions of Articles 169 to 174 of the Law on Administrative Procedures.

- The judge presiding over the trial checks the identity of the participants in the trial through online comparison of identification documents or through the national population database system.

- At the opening, the judge presiding over the trial, in addition to advising participants about the rights and obligations of the parties, shares the following information :

+ The online trial has the same the procedures and formalities of civil proceedings

+ The legitimate rights and interests of the parties at all connection points are still implemented and protected according to the provisions of the Law on Administrative Procedures.

### **2.4. Litigation at the trial**

**Main tasks and implementation skills:**

- Implement according to the provisions of Articles 175 to 197 of the Law on Administrative Procedures.

- If the participants in the proceedings at the component connection point provide additional documents and evidence, the following procedures shall be followed:

+ Request the participants in the proceedings to make electronic copies in the form of and send them to the Trial Council via the online trial link or the email address provided by the Court.

+ Submission of evidence and documents shall be in accordance with the provisions of Clause 2 Article 83, Clause 2 Article 133, Clause 3 Article 176 of the Law on Administrative Procedures.

The court shall make a record of the submission of documents and evidence according to

form No. 07-HC issued together with Resolution No. 02/2017/NQ-HDTP dated January 13, 2017, of the Council of Judges of the Supreme People's Court.

If the parties at the point of the connection point submit evidence and documents, the signature or fingerprint shall be confirmed on the record via electronic signature in situations where a digital signature or commitment at the court session is required regarding the evidence and documents submitted electronically and shall be recorded in the court session minutes.

This evidence must be published and reviewed and evaluated after the Court receives a copy of the documents and evidence.

- The presiding judge must publish the documents and evidence of the case

- + Do not publish documents and evidence related to state secrets, national traditions and customs, protection of persons under 18 years of age or to keep private life confidential at the legitimate request of the parties.

- + Documents and evidence, if announced at the trial, must be displayed on the arranged screen system, ensuring that participants in the proceedings at all points of connection can see them.

### 3. Post-trial work

- The minutes of the trial comply with form No. 20-HC issued together with Resolution No. 02/2017/NQ-HDTP dated January 13, 2017, of the Council of Judges of the Supreme People's Court. The minutes must clearly state at which connection points the trial took place and clearly state the full names of the participants in the proceedings at the component connection points. Recording audio and video with audio of the online trial in the form of electronic data does not affect the preparation of the minutes of the trial.

- If a participant in the proceedings requests to see the minutes of the trial, the Court Secretary shall present the minutes of the trial to the requester and carry out other relevant procedures (if any) in accordance with the provisions of the law on proceedings;

- The judgment and decision of the Court must comply with Form No. 22-HC issued together with Resolution No. 02/2017/NQ-HDTP dated January 13, 2017, of the Council of Judges of the Supreme People's Court. The opening part of the judgment and decision of the Court must clearly state at which connection points the trial took place, using the following format:

<p>On the dates..... month..... year..... at:</p> <ul style="list-style-type: none"><li>+ At the central connection point:.....</li><li>+ At the component connection point:.....</li></ul> <p>The Court... has conducted an online public first-instance trial of the case number:...../...../TLST-.....</p>
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### 4. Handling situations

- **Case 1:** Situation guidance provided in Article 14 of Joint Circular No. 05/2021/TTLT: before the trial takes place or during the online trial, if the online system is interrupted due to a connection error, power outage, or other incident that prevents the trial from continuing, the Trial Panel shall issue a decision to suspend the trial.

- + Decision to suspend the trial: The court clerk shall contact participants by phone to notify them of the suspension of the trial and send a notification after the trial is suspended.

- + If the trial cannot be held on the reopening date, the Court shall issue a decision to



postpone the trial. The Court shall decide whether to reopen the trial online or in the usual form according to the provisions of law.

- In a situation where lawyers and litigants have a request for an online trial:

+ The judge assigned to handle the case shall consider whether it is a case that can be tried online or not to decide to open an online trial.

+ If a litigant disagrees with the online trial, the response can be in writing or by other appropriate means to let the Lawyer and the litigant know about that disagreement and that it is not a case of complaint or denunciation in civil proceedings.

- **Case 2:** One party does not agree to open an online trial.

+ Resolution No. 33/2021/QH15 and Joint Circular No. 05/2021/TTLT-TANDTC-VKSNDTC-BCA-BQP-BTP dated December 15, 2021, do not stipulate that opening an online trial requires the consent of the parties. Therefore, in this case, the Court can still open an online trial.

+ For parties who do not agree to open an online trial, the Court will summon them to participate in the trial at the central connection point.

- **Case 3:** The party turns on the electronic device connected to the central connection point, but when the verdict is announced, the connection is lost and they cannot continue to participate in the trial.

In this case, based on the provisions of Article 195 of the Law on Administrative Procedures, if the party is present at the trial but is absent when the verdict is announced, the Trial Panel will read the verdict according to the regulations.

- **Case 4:** The trial is held online because the debate is expected to be prolonged and complicated but is not a case of temporary suspension of the trial. In this situation, the Court may switch from an online trial to an in-person trial.

Resolution No. 33/2021/QH15 and Joint Circular No. 05/2021/TTLT-TANDTC-VKSNDTC-BCA-BQP-BTP dated December 15, 2021 do not stipulate this content, however, to ensure convenience and efficiency in resolving the case, the Court may decide that the next day of the debate session will be transferred to an in-person trial procedure without having to issue a written notice, but litigants will be notified at the trial, and the decision will be clearly stated in the trial minutes.

- **Case 5:** Can the Court arrange for a reserve People's Assessor to participate in the trial at the component connection point?

Resolution No. 33/2021/QH15 and Joint Circular No. 05/2021/TTLT-TANDTC-VKSNDTC-BCA-BQP-BTP dated December 15, 2021, do not stipulate that when organizing an online trial, a reserve People's Assessor must participate at the central connection point. A reserve People's Assessor who is not a member of the Trial Panel has the right to ask questions and vote during the deliberation.

Therefore, to ensure flexibility and still comply with the provisions of the Law on Administrative Procedure on monitoring the trial, a reserve People's Assessor can participate at the component connection point arranged by the Court (it is not required to arrange a component connection point such as the Courtroom at the central connection point).

- **Case 6**

The prosecutor requests to participate in the online trial at the component connection point arranged by him/her.

According to the provisions of Clause 1, Article 156 of the Law on Administrative Procedures, the prosecutor must participate in the trial. If absent, the Trial Panel will still proceed with the trial. However, if the prosecutor has participated in the online trial, he/she must follow the instructions in Clause 1, Article 10 of Joint Circular No. 05/2021/TTLT-TANDTC-VKSNDTC-BCA-BQP-BTP dated December 15, 2021, and must participate at the central connection point.

### **- Case 7**

The defendant is the Chairman of the People's Committee at the provincial or district level and requests that a number of other People's Committees and specialized agencies be allowed to monitor the online trial via their unit's online system, not the component connection points as prescribed.

Typically, the trial is held publicly, except in the case of a closed trial. According to the guidance in Clause 1, Article 10 of Joint Circular No. 05/2021/TTLT-TANDTC-VKSNDTC-BCA-BQP-BTP dated December 15, 2021, the Court is responsible for establishing the conditions for individuals, agencies, and organizations to attend the online trial. Therefore, in this case, the Court may allow the People's Committee and other specialized agencies to monitor the online trial through their unit's online system, but must ensure compliance with the court's rules, and the People's Committee or other specialized agencies must not record audio or video without permission from the Presiding Judge and the litigants nor broadcast the trial live on the Internet.

- Litigants violate the court's rules and/or obstruct the proceedings

- + Violations of court rules, and other acts obstructing the proceedings are determined according to the provisions of Article 153 of the Law on Administrative Procedures and Articles 23 and 24 of Decree No. 02/2022/UBTVQH15. If they occur, the person will be subject to administrative sanctions.

- + At the component connection point

Some violations of court rules at points d, g, h, clause 1; points a, i, clause 2; Point b, Clause 4, Article 23 of Ordinance No. 02/2022/UBTVQH15 do not apply to participants in the proceedings at the connection point arranged by the litigant.

- + Procedures for handling administrative violations

- \* The judge presiding over the trial must draw up a record of administrative violations in accordance with the provisions of Article 43 of Ordinance No. 02/2022/UBTVQH15.

- \* The record of administrative violations must be drawn up in compliance with the provisions of Article 58 of the Law on Handling of Administrative Violations and relevant laws.

## **II. Appellate trial**

Organizing an online trial at the appellate level is similar to a first-instance trial.

Even if the Court of First Instance has tried a case online, the Judge assigned to handle the case at the appeal trial must still consider and organize the online trial based on the physical conditions and nature of the case, during the preparation period for the appeal trial.

## PART FOUR

### ONLINE TRIAL OF CIVIL CASES

#### LEGAL DOCUMENTS

- Civil Procedure Code
- Law on Protection of State Secrets and related legal documents.
- Resolution 33/2021/QH15 of the National Assembly on organizing online court sessions;
- Ordinance No. 03/2022/UBTVQH15 dated December 13, 2022 of the Standing Committee of the National Assembly on the order and procedures for considering and deciding on the application of administrative measures at the People's Court.
- Joint Circular No. 05/2021/TTLT-TANDTC-VKSNDC-BCA-BQP-BTP of the Supreme People's Court, the Supreme People's Procuracy, the Ministry of Public Security, the Ministry of National Defense, and the Ministry of Justice dated December 15, 2021 detailing and guiding the implementation of organizing online court sessions.

### I. First Instance Trial

#### 1. Trial Preparation

##### 1.1. Review and Decide to Bring the Case to Online Trial

###### **Main Tasks and Skills:**

- Within 7 days at the latest, before deciding to bring the case to trial for cases that are resolved under normal procedures, and within 2 days for cases that are resolved under simplified procedures, the Judge assigned to preside over the trial must:

+ Check and review the case to see if it is eligible for an online trial

The case is eligible for an online trial when all the following conditions are met:

(1) The case has simple circumstances and nature.

The case : (i) The case meets the conditions for applying the simplified procedure (Article 317 of the Civil Procedure Code); or (ii) The civil case is not eligible for applying the simplified procedure.

A case with simple circumstances and nature is understood is one with a clearly determined dispute relationship between the parties and clarity about the law to be applied.

(2) The documents and evidence in the case file are clear.

Clear evidence means the documents and evidence in the case file provide a sufficient basis to resolve the case (including cases where the parties still dispute the obligations and evidence), and where the documents and evidence submitted, supplemented, and collected ensure compliance with the provisions of the Criminal Procedure Code.

(3) The case does not involve state secrets.

See the online trial of criminal cases section I.1 (1.1)

+ ***Assess the current status of facilities and techniques to ensure the organization of online court sessions.***

- See the section on online trial of administrative cases, Section I.1 (1.1), and in particular, the section on assessing the current status of facilities and techniques to ensure the organization of online court sessions.

Determine the number of component points: See the section on online trial of administrative cases, Section I.1 (1.1), and, in particular, the section on deciding the number of component points.

- For civil cases where a party claims to be eligible for legal aid and does not have the technical and technological conditions to participate in online court sessions, the Court shall explain to the party that they have the right to request the State Legal Aid Center to consider, accept the case, and support participation in online court sessions, and the Court shall also notify the State Legal Aid Center for contact.

- Notification to the State Legal Aid Center may be made in writing or by electronic means or other appropriate methods.

+ *Decision on the composition of participants at the connection points*

- **See the section on online trial of administrative cases**, Section I.1 (1.1), and, in particular, the section on deciding the number of component connection points.

- The decision on bringing the case to trial is in compliance with form No. 47-DS issued with Resolution No. 01/2017/NQ-HDTP dated January 13, 2017, of the Council of Judges of the Supreme People's Court and Section 1 of the Decision clearly shows the following content:

Location of the trial:

+ At the central connection point:.....

+ At the component connection points:.....

The case is tried online (open or closed trial) from the central connection point with....component connection points.

## **1.2. Summoning the litigant and sending the decision to bring the case to trial**

### **Main tasks and implementation skills:**

- For the trial to proceed as planned, ensure quality, and comply with the provisions of the Civil Procedure Code, the Judge summons the litigant.

- The summons clearly states the point of contact where the litigant must participate and clearly states ***that the litigant must fulfill the obligations for the online trial of administrative cases, stated in Section I.1 (1.2), summons the litigant, and sends the decision to bring the case to trial.***

- The summons may include additional content about violations of obligations when participating in the trial, which may result in penalties for obstructing the proceedings:

+ Violating the rules of the court session and meeting (Article 23 of Decree No. 02/2022/UBTVQH15).

+ Obstructing the proceedings (Article 24 of Decree No. 02/2022/UBTVQH15).

## **1.3. Develop a plan to prepare for an online trial**

**Main tasks and skills to perform:** *See section on the online trial of administrative cases Section I.1 (1.3), Develop a plan to prepare for an online trial.*

*1.4. Test connection before the trial takes place*

**Main tasks and skills to perform:** *See online trial of administrative cases Section I.1 (1.4), Test connection before the trial takes place.*

## **2. First Instance Trial**

### **2.1. Dissemination of Court Rules**

#### **Main tasks and skills to perform:**

- The court clerk shall disseminate the court rules according to the provisions of Article 237 of the Civil Procedure Code.

- For other content to be disseminated, see the *section on online trial of administrative cases, Section 1.2 (2.1), dissemination of court rules.*

### **2.2. Check the presence of participants in the court session**

**Main tasks and skills to perform:** *See online trial of administrative cases Section 1.2 (2.2), Checking the presence of participants in the trial.*

### **2.3. Procedure for starting the trial**

#### **Main tasks and skills to perform:**

- Follow the provisions of Articles 239 to 246 of the Civil Procedure Code.

- The judge presiding over the trial shall check the identity of the participants in the trial through online comparison of identification documents or through the national population database system.

-At the opening, the judge presiding over the trial, in addition to advising participants about the rights and obligations of the parties, shares the following information :

+ The online trial has the same the procedures and formalities of civil proceedings

+ The legitimate rights and interests of the parties at all connection points are still implemented and protected according to the provisions of the Law on Administrative Procedures.

### **2.4. Litigation in court**

#### **Main tasks and skills to perform:**

- Follow the provisions of Articles 247 to 263 of the Civil Procedure Code.

+ The submission of evidence and documents is conducted according to the provisions of Clause 4 Article 96, Clause 3 Article 248 of the Civil Procedure Code.

The court shall make a record of the submission of documents and evidence in accordance with form No. 01-DS issued together with Resolution No. 01/2017/NQ-HDTP dated January 13, 2017, of the Council of Judges of the Supreme People's Court.

If the parties at the point of the connection point submit evidence and documents, the signature or fingerprint shall be confirmed on the record via electronic signature in situations where a digital signature or commitment at the court session is required regarding the evidence and documents submitted electronically and shall be recorded in the court session minutes.

This evidence must be published and reviewed and evaluated after the Court receives a copy of the documents and evidence.

- The presiding judge must announce the documents and evidence of the case

+ Documents and evidence related to state secrets, national traditions and customs, protection of persons under 18 years of age or to keep private life confidential at the legitimate request of the litigant shall not be announced.

+ Documents and evidence, if announced at the trial, must be shown on the screen system that has been arranged, ensuring that all participants in the proceedings at the connection points can see them.

### 3. Post-trial work

- The minutes of the trial must comply with form No. 48-DS issued together with Resolution No. 01/2017/NQ-HDTP dated January 13, 2017, of the Council of Judges of the Supreme People's Court. The minutes must clearly state which connection points the trial took place at and clearly state the full names of the participants in the proceedings at the component connection points.

\* Recording audio and video of the online trial in the form of electronic data does not affect the preparation of the minutes of the trial.

- If a participant in the proceedings requests to see the minutes of the trial, the Court Secretary shall present the minutes of the trial to the requester and carry out other relevant procedures (if any) in accordance with the provisions of the law on litigation;

- The judgment and decision of the Court must comply with Form No. 52-DS issued together with Resolution No. 01/2017/NQ-HDTP dated January 13, 2017 of the Council of Judges of the Supreme People's Court. The opening part of the judgment and decision of the Court must clearly state at which connection points the trial took place, specifically:

<p>On the dates..... month..... year..... at:</p> <p>+ At the central connection point:.....</p> <p>+ At the component connection points:.....</p> <p>The Court... has conducted an online public first-instance trial of the case number:.../.../TLST-....</p>
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### 4. Handling situations

- Situations occurring at online civil court sessions are similar to those occurring at administrative court sessions in Part Three above.

- Consider the following for organizing online court sessions, combined with experience-sharing sessions:

+ Civil experience-sharing sessions aim to enhance the sense of responsibility of Judges, Investigators, Secretaries, Prosecutors, Inspectors, and Court and Procuracy officials, and to provide self-training, accumulation of knowledge, experience, learning to improve skills and professional qualifications in resolving civil, marriage and family, commercial and labor cases.

+ The selection of cases for civil trial sessions to gain experience is often based on one of the following criteria (except for cases related to State secrets or the private lives of the parties in the case): (1) complex cases, typical in nature, (2) cases with common disputes in the locality, or (3) cases with diverse participants in the proceedings or people protecting the rights and interests of the parties.

Thus, the criteria for selecting trial sessions to gain experience and civil cases to be tried online are different, however, when organizing trials to try these cases, the Court needs to coordinate with the Procuracy, agencies, organizations, and parties very carefully and have a plan for organizing the trial.

+ Depending on the scale, nature of the case, and the subjects participating in the online trial to gain experience, the transmission line connecting the connecting points must be reliable, convenient, and safe.

## PART FIVE

# ONLINE MEETING TO CONSIDER APPLYING ADMINISTRATIVE HANDLING MEASURES AT THE PEOPLE COURTS; APPLYING MANDATORY DRUG DETOXIFICATION MEASURES FOR MINORS

### LEGAL DOCUMENTS

- Decree No. 01/2022/UBTVQH15
- Decree No. 03/2022/UBTVQH15
- Law on Protection of State Secrets and related legal documents.
- Decree No. 02/2022/UBTVQH15

Decree No. 01/2022/UBTVQH15 and Decree No. 03/2022/UBTVQH15 do not specify the specific conditions for which online sessions can be held, the number and requirements for the connection points with regard to organizing online court sessions as prescribed in Resolution No. 33/2021/QH15 and instructions in Joint Circular No. 05/2021/TTLT-TANDTC-VKSNDTC-BCA-BQP-BTP. Therefore, to organize a meeting to consider and decide on the application of administrative measures at the People's Court, and to send a person to an online compulsory drug rehabilitation facility, the following steps must be taken:

### **1. Consider and decide to open an online meeting**

#### **Main tasks and implementation skills:**

Consider and decide to open an online meeting

+ Within 1 day at the latest, before deciding to open a meeting, the assigned Judge must assess the nature and complexity of the case and the status of the Court's facilities and ability to handle an online meeting.

+ If the juvenile is being managed at a compulsory drug rehabilitation facility or a center or facility receiving social subjects (collectively referred to as a management facility) while completing the procedures for admission to a compulsory drug rehabilitation facility, the Court shall notify in writing or communicate properly with the management of the facility about opening an online meeting.

+ If a minor and their legal representative or the person proposed to apply administrative handling measures requests an online meeting, the Court may open an online meeting. The minor and their representative and the person proposed to apply administrative handling measures must write a commitment to follow these requirements: (1) Comply with the internal regulations of the meeting; (2) Always keep the camera and microphone on the electronic device turned on; (3) Only speak when requested; (4) Do not create other noise while the microphone is on and affect the meeting; (5) Be properly dressed; (6) Do not stand up or leave during the meeting without the permission of the judge; (7) Do not take photos, record audio, video, record with sound, distribute documents or distribute account information or broadcast the meeting live on the internet; and (8) The parties participating in the online meeting must present one of the following identification documents: citizen identification card, passport, etc. for verification. (6) The parties must prepare meeting room conditions and online service equipment at the connection point they arrange for themselves.

- The opening of an online meeting must be clearly stated in the Decision to open a meeting about the application of administrative measures, that might result in sending a person to a

compulsory drug rehabilitation facility and the Decision must contain information regarding the central connection point and the number of component connection points.

- Component connection points: should not exceed 2 component connection points.
- Summon the NCTN, the representative, the person proposed to apply administrative measures and send the decision to open the meeting
  - + In order for the meeting to take place as planned, ensure quality, and comply with the provisions of Decree No. 01/2022/UBTVQH15, Decree No. 03/2022/UBTVQH15, the Judge summons the necessary litigants and participants.
  - + The summons clearly states the NCTN connection point, and that the representative and the person proposed to apply administrative measures must participate.
  - + The summons may include information about violation of obligations when participating in the meeting, which may result in penalties for obstructing the proceedings as prescribed in Articles 23 and 24 of Ordinance No. 02/2022/UBTVQH15.

## **2. Requirements for the connection points**

### **Main tasks and skills to perform:**

- The meeting room at the central connection point is organized according to the provisions of Circular No. 01/2017/TT-TANDTC dated July 28, 2017, of the Chief Justice of the Supreme People's Court regulating the courtroom and ensuring a number of requirements according to the instructions in Article 4 of Joint Circular No. 05/2021/TTLT-TANDTC-VKSNDTC-BCA-BQP-BTP.
- For meetings involving minors who are proposed to be subject to administrative measures of being sent to a reformatory school or compulsory drug rehabilitation, the meeting must be organized in a friendly manner, ensuring the rights and legitimate interests of the proposed person and ensuring the best interests of the proposed person. The meeting room is arranged in a friendly and safe manner. The judge assigned to conduct the meeting wears the administrative uniform of the Court. The parents or guardians, and legal representatives of the proposed person (if any) support the proposed person at the meeting. The questions asked of the proposed person must be appropriate to their psychology, age, level of development, cultural level and understanding. Questions must be short, simple, easy to understand, and not ask many questions at the same time.
- For the component connection points, the following requirements must be ensured: polite, serious, quiet space; lighting suitable for the space, avoiding backlighting and offensive colors; the images and space around the participants must be fully displayed on the projection screen; suitable electronic devices must be used to ensure that the transmission of sound and images at the meeting is clear and uninterrupted.
- Technical and technological requirements ensure security, safety, and efficiency during the meeting.

## **3. Preparing for an Online Meeting**

### **Key Tasks and Skills:**

- At least 1 day before the online meeting takes place, the Court must check and prepare conditions for a successful test connection between the central connection point and the component connection points. At least 1 hour before the online meeting takes place, the central connection point must connect with the component connection points to ensure that people at the connection points can see each other's images and hear each other's sounds clearly and that the audio connection functions are smooth and ready to operate.
- If the component connection point is organized at another Court headquarters or management



facility, the Court shall proactively coordinate with these agencies in providing accounts and passwords to connect to the online system at the central connection point.

- If the component connection points are located at the location of the minor or the person proposed to apply administrative handling measures, the Court shall proactively request people at the location to coordinate in checking the technical, image, and sound signal quality of the online system and connecting electronic devices at least 1 hour before the online meeting takes place.

#### **4. Participants**

##### **Main tasks and skills:**

- Based on each specific case, the Judge decides on the participants at the component connection points. However, to ensure the effective implementation of the online meeting, the connection points need to be arranged as follows:

+ At the central connection point, the mandatory participants include the Judge, the Session Secretary, and the Prosecutor assigned to participate in the meeting.

\* In cases of consideration and decision to send a person to a drug rehabilitation facility, the Head of the Department of Labor - Invalids and Social Affairs or authorized person, the Prosecutor, the proposed person, the parent or guardian or legal representative, the person protecting the legal rights and interests of the proposed person, expert, interpreter, translator, medical expert, psychologist, educator, sociologist, representative of the school where the proposed person studies, representative of the People's Committee at the commune level, representative of the Vietnam Fatherland Front Committee at the commune level and member organizations of the Front where the proposed person resides, and other people attending the meeting if they choose or are summoned by the Court.

\* In cases of consideration and decision to apply administrative handling measures at the People's Court, the applicant or authorized person, the applicant, the legal representative of the applicant (if any), the parents or guardian of the applicant who is a minor, the person protecting the legal rights and interests of the applicant, the appraiser, interpreter, translator, medical, psychological, educational, sociological expert, representative of the agency or organization where the applicant works, representative of the school where the applicant studies, representative of the People's Committee at the commune level, representative of the Vietnam Fatherland Front Committee at the commune level and member organizations of the Front where the applicant resides, and other people attending the meeting shall present opinions to clarify relevant issues. The person working in child protection at the commune level shall attend the meeting if they choose or are summoned by the Court.

\* If the meeting is held publicly, the Court is responsible for preparing the necessary conditions for individuals, agencies and organizations to attend the meeting in accordance with the provisions of law.

+ At the component connection point:

\* In cases for consideration and decision to send a person to a drug rehabilitation facility, where the component connection point is located at the management facility, the participants include minors and representatives of the management facility. The legal representative of the minor participates at this connection point, except in cases where they request to participate at the central connection point.

\* If the component connection point is located at another Court headquarters, the participants include participants in the proceedings, people protecting the rights and legitimate interests of the litigants (if any), and civil servants of the Court where the component connection point is located to support the organization of the meeting.

\* If the component connection point is located at the place of the applicant or the State Legal Aid Center, the participants include the person participating in the proceedings and the person protecting the legal rights and interests of the litigant (if any).

\* The person protecting the legal rights and interests of the minor or the person proposed to apply administrative handling measures shall participate in the meeting at one of the connection points arranged or accepted by the Court.

If the person protecting the legal rights and interests of the minor or the person proposed to apply administrative handling measures cannot participate in the meeting at one of the connection points arranged or accepted by the Court, he/she must submit a written request to the Court for permission to participate in the meeting at a connection point he/she has arranged. The component connection point of the person protecting the legal rights and interests must be guaranteed according to the requirements of the Court.

The person protecting the legitimate rights and interests of a minor or a person proposed to be subject to administrative measures has the right to discuss with the defendant, victim, or litigant when approved by the presiding judge.

## **5. Online meeting**

### **Main tasks and implementation skills:**

- Meetings applying administrative measures at the People's Court or compulsory drug rehabilitation are not required to be recorded or recorded with sound.

- Before opening the meeting, the meeting secretary shall carry out the following tasks:

+ Check the presence of those requested by the Court to attend the meeting. If someone is absent, the reason for their absence must be determined and reported to the Judge who will decide whether to continue the meeting or postpone the meeting:

+The secretary shall check the identity of those attending the meeting through an online comparison of identification documents or through the national population database system.

+ The secretary shall disseminate the meeting rules.

- The meeting procedures are as follows:

+ For the meeting to consider and decide on admission to a compulsory drug rehabilitation facility, the provisions of Clause 4, Article 21, Clause 4, Article 39 of Ordinance No. 01/2022/UBTVQH15 shall apply;

+ For the meeting to consider and decide on the application of administrative measures at the People's Court, the meeting shall follow the provisions of Clause 3, Article 21, Article 35 of Ordinance No. 03/2022/UBTVQH15;

+ In addition to the above common contents, the Judge presiding over the meeting shall notify participants that "*the rights and obligations of participants in the online meeting at the component connection points shall still be implemented in accordance with the provisions of law*".

## **6. Work to be done after the meeting**

- Minutes of the online meeting: In addition to showing the content specified in Article 22 of Decree No. 01/2022/UBTVQH15, Article 22 of Decree No. 03/2022/UBTVQH15, the minutes of the meeting must also include the content of the meeting held online, information about the central connection point, the number of component connection points, and participants at the connection points.

- The court will make one of the following decisions: decide whether or not to send the person to a compulsory drug rehabilitation facility; decides to apply or not to apply administrative

measures; decide to suspend or temporarily suspend the consideration; decide to send a person to a compulsory drug rehabilitation facility; decide to implement administrative handling measures (if issued at the meeting). The decision of the Court, must show the date, month, year of the decision as prescribed in Article 23 of Ordinance No. 01/2022/UBTVQH15, Article 23 of Ordinance No. 03/2022/UBTVQH15. The meeting minutes must also include that the meeting was held online and information about the central connection point and the number of component connection points.

## 7. Handling situations

- **Case 1:** If at the meeting, the Prosecutor, the person being proposed, the parent or guardian or legal representative, the person protecting the legal rights and interests of the person being proposed, the Head of the Department of Labor - Invalids and Social Affairs or the authorized person requests to review the minutes, requests to record the amendments and additions to the minutes and sign the confirmation, then the court will do the following:

- + Show the meeting minutes so the people at the connecting point can review the minutes;
- + Sign the confirmation using electronic signature if there a digital signature or secure a commitment at the court session to agree to confirm the presented minutes without signing the meeting minutes.

- **Case 2:** If the meeting has been postponed once according to regulations (absence of the Prosecutor; Head of the Department of Labor - Invalids and Social Affairs; Proposer), can the meeting be postponed again?

According to the provisions of Article 8 of Ordinance No. 01/2022/UBTVQH15, Article 8 of Ordinance No. 03/2022/UBTVQH15, the time limit for consideration and decision to send to a compulsory drug rehabilitation facility or to apply administrative handling measures at the People's Court is 15 days from the date the Court receives the case. Within 15 days after the Court recives the case, it must issue one of the following decisions: to send or not to send a minor to a compulsory drug rehabilitation facility; to apply or not to apply administrative handling measures; to suspend or temporarily suspend consideration and decision to send to a compulsory drug rehabilitation facility, or to apply administrative handling measures. In complicated cases, this time limit may be extended to no more than 30 days.

Thus, the time limit for postponing the meeting to consider and decide on these measures must conform with the time limit for considering and deciding on compulsory drug rehabilitation facilities and applying administrative measures at the People's Court. In order to thoroughly and comprehensively resolve the issues, the Court, relevant competent agencies and persons must also carry out many other procedures such as supplementing documents, studying records, etc. Therefore, to ensure the time limit is met for considering and deciding on compulsory drug rehabilitation facilities and applying administrative measures at the People's Court, the Court should consider holding an online meeting.

- **Case 3:** The Procuracy at the same level requests the Court to digitize the requested file and transfer the digitized file by appropriate electronic means. How can the court handle the request to hold an online meeting at the connection point arranged by the Procuracy?

- + According to the provisions of Clause 3, Article 4 of Ordinance No. 01/2022/UBTVQH15, Clause 3, Article 4 of Ordinance No. 03/2022/UBTVQH15, the Procuracy must come to the Court to study the file or photocopy the file without stipulating the digitization of the file.

In this case, the Court may digitize the file at the request of the Procuracy if it meets the conditions for implementation and ensures the confidentiality of information on documents and files.

- + Ordinance No. 01/2022/UBTVQH15 and Ordinance No. 03/2022/UBTVQH15 do not

specifically stipulate the composition of participants in the meeting at the connection points. However, in principle, to ensure convenient and comprehensive supervision of the session, the Procuracy should participate at the central connection point. However, depending on the specific case, the Court can create conditions for the Procuracy to participate in the session at the connection point arranged by the Procuracy but must ensure the conditions for the meeting room.

- **Case 4:** The principal of the reformatory school, the director of the compulsory education facility, and the director of the compulsory drug rehabilitation facility have a written request for the Court that has issued a decision to apply administrative measures to hold an online meeting to reduce the remaining term of application of administrative measures. How is this resolved?

+ Based on the provisions of Clause 2, Article 28 of Ordinance No. 02/2022/UBTVQH15, this authority belongs to the Court where the reformatory school, compulsory education facility, or compulsory drug rehabilitation facility is located, so the Court that issued a decision to apply administrative measures shall issue a written notice to the principal of the reformatory school, the director of the compulsory education facility, or the director of the compulsory drug rehabilitation facility state that it is not accepting the case and shall forward the request and accompanying documents to the competent Court for settlement.

+ According to the provisions of Clause 3, Article 28 of Decree No. 02/2022/UBTVQH15, the Court does not have to hold a session to consider reducing the remaining time limit for applying administrative measures. Therefore, the Court can notify the relevant people in writing that it does not accept the request to hold an online session.

- **Case 5:** What are the funding sources for organizing online meetings to consider and decide on compulsory drug rehabilitation and application of administrative measures at the People's Court?

According to the provisions of Article 7 of Decree No. 01/2022/UBTVQH15, Article 7 of Decree No. 03/2022/UBTVQH15, in addition to costs such as costs for interpreters and translators, costs for lawyers and legal assistants who protect the legal rights and interests of the person being proposed, appraisal costs are determined as "other costs" belonging to litigation costs. Thus, these expenses are implemented in accordance with the provisions of the law on litigation costs of the Court.

## PART SIX

### INTERNATIONAL EXPERIENCE IN ONLINE TRIAL

#### DOCUMENTS

1. Online Litigation Rules of the People's Courts, as adopted at the 1,838th meeting of the Adjudication Committee of the Supreme People's Court of China on May 18, 2021, are hereby promulgated and shall take effect on 1 August 2021.
2. The Online Operation Rules of the People's Courts, as adopted at the 1,861st Session of the Adjudication Committee of the Supreme People's Court of Chian on December 30, 2021, are hereby promulgated and shall take effect on March 1, 2022.
3. South Korea's Online Trial Rule No. 1753 takes effect from July 22, 2020

### I. Concept and characteristics of online litigation

#### 1. Concept

In the world, there is currently no unified concept of online litigation. The concept of online litigation in China and South Korea is regulated as follows:

- *China*: According to Article 1 of the People's Court Online Litigation Rules promulgated by the Supreme People's Court of China, effective from August 1, 2021, *"the People's Court, litigants, and other participants in the litigation may, based on the electronic litigation platform (hereinafter referred to as the "litigation platform"), carry out part or all of the stages of the litigation process, such as case filing, mediation, evidence exchange, questioning, trial and service, through the Internet or other specialized networks.*

*Online litigation activities and traditional litigation activities have the same legal effect"*

- *Korea*: According to Clause 1, Article 2 of the Online Trial Procedures Rules No. 1735, effective from July 22, 2020, *"Online trial is the conduct of a trial in which part or all of the parties involved in the case do not come directly to the courtroom but participate in the trial at a remote location equipped with equipment to transmit both visual and audio signals at the same time"*.

#### 2. Characteristics of online litigation

Currently, the courts of some countries have issued their own rules on online proceedings, while some countries have regulations on online proceedings integrated into their laws. Although countries have different regulations, in general, online proceedings have some main characteristics as follows:

First, the purpose of online trials is to save costs and create favorable conditions for litigants, witnesses, and lawyers who live far away and have difficulty coming to court in person. Online trials meet the wishes of litigants who do not want to be present at the Court headquarters for personal and cultural reasons. Online trials are mainly carried out for civil and administrative cases.

In criminal cases, due to the nature of the case, which involves the coordination of investigation and prosecution agencies, special requirements for evidence, protection of the rights of the parties, and safety data, only a few cases are tried online. Online trials or hearings are mainly related to quick, simple criminal proceedings such as parole, cases that cannot be tried in person due to epidemics, and other extraordinary reasons.

Second, online proceedings are conducted through the Court's selected online proceedings platform. In essence, online litigation only changes the method of carrying out legal proceedings without changing the requirements and procedures necessary to resolve the case.

Third, online proceedings must find ways to ensure the truthfulness of witnesses' testimonies.

Fourth, online proceedings are held in all case types. Depending on the nature of the case, the Court will consider whether it is appropriate to hear the case online or not. Cases related to national security, state secrets, or cases with foreign elements, cases involving many participants, complexity, and a lot of evidence that must be reviewed, are typically conducted in person.

Fifth, in some jurisdictions, online proceedings occur only when the parties agree to participate in online proceedings. Some countries, however, allow online proceedings even when a party does not agree. Some jurisdictions also have regulations on hybrid trials where the case may be heard in a semi-online format.

Sixth, resolving a case using an online courtroom is similar to a trial in a regular courtroom. The language and format used in the online courtroom must be the same as what is used in a regular courtroom.

## **II. Principles and scope of online trial**

### **1. Principles of online trial**

#### **1.1. China**

When conducting online litigation, the People's Courts of China shall comply with the following principles:

- The principle of impartiality and efficiency. The People's Courts shall conduct online litigation in accordance with the relevant laws, streamline the trial process, improve working mechanisms, and provide technical support to enhance judicial efficiency and ensure judicial fairness.

- The principle of legality and voluntariness. The right of the parties and other participants in an action to choose the method of litigation shall be respected and protected. Without the consent of the parties and other participants in an action, the People's Courts shall not conduct online litigation in any mandatory manner.

- The principle of protecting the parties' rights. The People's Courts shall fully protect the procedural rights of the parties, strengthen the courts' obligations of reminding, explaining to, and informing the parties, and avoid reducing any procedures or impairing the parties' procedural rights and interests arbitrarily.

- The principle of providing convenience to the people. The People's Courts shall, by optimizing online litigation services, improving the function of litigation platforms, and promoting the application of information technology, reduce the litigation costs for the parties, and increase the efficiency of disputes resolution. The People's Courts shall also take into account the needs of different groups in litigation, and provide more guidance and convenience to the vulnerable groups such as the minors, the elderly, and the disabled.

- The principle of security and reliability. The People's Courts shall, in accordance with the relevant laws, safeguard national security, protect State secrets, trade secrets, personal privacy, and personal information, and ensure the security of online litigation data. The People's Courts shall regulate the application of technology to ensure technology neutrality and platform neutrality.

## **1.2. United States**

Courts in the United States typically consider the following six guiding principles in online adjudication: (1) Equal access, (2) Due process, (3) Transparency, (4) Fairness, (5) Standardization and (6) Safety.

## **1.3. Australia**

According to the regulations of the Western Australia State Court, there are two conditions for bringing a case to trial: (1) When the parties agree to an online trial and (2) the Court finds that online trials can improve trial efficiency.

## **1.4. South Korea**

Article 36 of South Korea's rules for handling trial operations requires the consent of the litigant to bring the case to an online trial.

## **2. Scope of regulation of online trial**

Currently, many countries use online trials for civil and administrative cases. Only a few criminal cases are tried online.

- China: Based on consideration of case details, litigant's wishes, and technical conditions, the Court may use online proceedings for the following cases: (1) Civil cases; (2) Criminal cases tried according to summary procedures, reduced sentences, parole, and criminal cases that are not suitable for direct trial for other special reasons; and (3) Suitable cases applying other online litigation methods.

- South Korea: Mainly online trial of civil and administrative cases, limited trial of criminal cases.

- United States: State courts in the U.S. may hear any type of cases online. Typically U.S. courts use online proceedings for civil cases and some administrative case hearings (in the U.S., administrative cases are called child welfare or juvenile delinquency). Although, U.S. courts may hear some hearings in criminal cases online (e.g., scheduling conferences), trials are typically in-person.

## **3. Cases are not heard online**

### **3.1. China**

China stipulates that the following cases cannot be heard online:

- Both parties clearly express disagreement with the online trial or one party disagrees and has a legitimate reason;

- The litigants do not have full technical conditions and capacity to participate in online trials;

- It is necessary to determine identity and compare originals and original objects in an in-person trial;

- The circumstances of the case are complicated, the case involves significant documents and evidence, and an online trial is not beneficial for clarifying the truth and applying the law;

- The case is related to national security and State secrets;

- The case has profound social impact, receiving widespread attention from the masses;

- Other cases where the People's Court finds it unsuitable for online trial.

### **3.2. South Korea**

South Korea is a country that places great emphasis on developing electronic courts. Currently, due to the influence of cultural factors, the Court's online trial is only applied in the following cases:

- Interrogating remote witnesses who cannot be present at the trial such as witnesses who are abroad in civil or criminal cases;

- Preparatory meetings for the opening of court hearings for civil, criminal, and administrative cases;

- Civil cases with small dispute value at district courts.

### **3.3. United States**

In the United States, state courts are responsible for enforcing state and local laws in civil and criminal matters. Many U.S. jurisdictions have developed court rules on online trials and hearings to create standardization and simplify decisions about when trials or hearing will be held online. Often, courts decide to hold online hearings by default in the following situations:

- The hearing will be short. These hearings include status hearings or scheduling conferences, criminal arraignments and plea agreements (particularly where incarceration is not anticipated), and non-evidentiary motion hearings.
- The hearing does not require physical evidence.
- There are not significant rights at stake. For this reason, most criminal trials are held in person.

## **III. Requirements for personal information, submission of documents and evidence**

### **1. Ensuring the accuracy of personal information**

The court shall pay special attention to identity verification during the trial through online comparison of identification documents and identity authentication platforms.

#### **1.1. China**

Article 7 of the Rules on online litigation of The People's Court stipulates that litigants participating in online proceedings must register real information on the online proceedings platform. The court must compare information about phone numbers, citizen identification cards, passport numbers, and unified social credit codes to confirm the authenticity of the information. After completing the online registration, the subject will be granted a dedicated account on the online litigation platform.

Online litigation participants must properly keep their exclusive accounts and passwords for logging into the litigation platform. Except for situations where evidence could prove that the exclusive account had been stolen or a system error had occurred, acts conducted on the litigation platform logged into with the exclusive account shall be deemed as acts conducted by the authenticated account owner himself/herself.

#### **1.2. South Korea**

South Korean law strictly regulates the verification of personal information. Article 13 of the Rules for Professional Handling of Civil Case Trials stipulates the confirmation of witness information as follows:

- After receiving the consent of the witnesses and before online interrogation, the Court can confirm personal information by submitting identification documents via transmission equipment.
- If witnesses do not agree to disclose personal identification information, the Court may apply one of the following methods for identity verification: (1) Only transmitting images of identification documents to the Trial Council; (2) Submitting identification documents with hidden information, except for information about date of birth and (3) Court officials participating in online trials can confirm identification documents.

#### **1.3. United States**

Most courts in the United State do not view identity documents as a means of identifying parties during court proceedings. Instead, courts rely on sworn testimony from parties about their identity or sworn testimony from another witness in criminal cases to identify defendants.



## 2. Submission of electronic litigation documents

Submission of electronic procedural documents and electronic data is regulated by the Courts of some countries as follows:

- *China*: Article 15 of Rules on online litigation of The People's Court stipulates: "For electronically stored information and electronic data submitted by the parties as evidence, the People's Courts shall, according to the relevant provisions of laws and judicial interpretations and after the parties' presentation and examination of the evidence, determine the truthfulness, legality, and relevance of the submitted evidence. Evidence that has not been verified by the People's Courts shall not be the basis for determining the facts of the case."

- *Australia*: The Federal Court Rules 2011, amended in 2020, provide for the electronic submission of documents. This rule also states the requirements if documents must be signed or stamped.

- *South Korea*: For criminal cases, where documents and papers need to be submitted to prove authenticity, a person can use an online device connected to a camera, or a public agency. Prosecutors may send copies of necessary documents to the Court for inspection.

## 3. Evidentiary Issues

### 3.1. United State

Decisions about whether to hold hearings and trials that require evidence online are often made by U.S. state courts on a case-by-case basis or by agreement of the parties. When evidence is being consider, the court must consider whether the evidence can be fully and fairly considered in an online format. This may depend on the type of evidence to be submitted. For example, the parties can view photographs or documents in a remote format. Physical evidence will be difficult to assess in an online format. For this reason, trials and hearings that require physical evidence are often held in person.

Courts in the U.S. have a variety of strategies for sharing evidence in remote hearings including: (1) Using screen share features on Zoom, WebEx, and other video conference platforms to share documentary, video, and photographic evidence with people appearing remotely; (2) Using email, shared drives (such as Dropbox or Google drive), or document sharing features in video conferencing chat functions to provide parties with evidence in real time during a proceeding; (3) Using digital evidence portals where parties can upload documents, images, and videos that will be presented as evidence before a hearing. All parties can access evidence uploaded into these portals.

Some U.S. state courts have created rules about evidence and online hearings. For example, Georgia's court rule regarding remote proceedings requires that "[a]ll participants must be able to see, hear, and otherwise observe any physical evidence or exhibits presented during the proceeding, either by video, facsimile, or another method".<sup>5</sup>

### 3.2. China

- Submitting documents and evidence: Parties can fill out and submit procedural documents, including statements and evidence. Paper documents or documentary evidence can be converted to electronic form and uploaded.

- Use and verification of electronic evidence: After review and approval by the People's Court, information is stored electronically and can be used in proceedings. However, the Court may request original documents if: (1) The opposing party claims inconsistency with the original and provides

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<sup>5</sup> Ga. R. Super. Ct. 9.2(B) available at <https://www.gasupreme.us/rules/> (last visited July 1, 2024)

reasonable reasons, (2) The electronic evidence is incomplete or unclear. (3) the Regulations require the submission of originals and (4) the Court finds it necessary.

- Electronic evidence can be considered consistent with the original if: (1) The opposing party does not object, (2) The evidence is notarized, (3) The evidence has been confirmed in a previous lawsuit, (4) The evidence been compared with the original and found to be consistent, (5) Other evidence demonstrates consistency.

#### **4. Ensure information security and protect personal information**

China's rules on online litigation stipulate that subjects participating in online proceedings must strictly comply with legal regulations on information security and fulfill obligations regarding information security, state secrets, commercial secrets and personal information protection. Article 3 of the above Rules stipulates that online proceedings must ensure compliance with legal requirements by integrating legal regulations with technological advances.

Unless the Court makes it public in accordance with the law, no one is allowed to disclose, disseminate and use online proceedings data contrary to regulations. If violated, the Court can, based on the specific situation, legal regulations and guiding documents on information security, protection of personal information and obstruction of proceedings, prosecute organizations and individuals who disclosed, disseminated, or used the information.

### **IV. Technical requirements of online courtrooms**

In principle, the settlement of cases using online courtrooms must be similar to trials in in-person courtrooms. Online courtrooms must meet the conditions for the trial to take place as in in-person courtrooms. Although the trial is online, the Court must still ensure the requirements for verifying evidence, creating favorable conditions for witnesses from far away to attend the trial, and providing truthful testimony and evidence. The courtroom must be modern, connected to the network, and equipped with smart devices. To ensure access to online hearings and trials, parties from far away should be able go to the nearest Court to attend the trial.

#### **1. South Korea**

Korea has applied a video conference system to use in the trial of simple criminal, civil and business-commercial cases. The courtroom is fully equipped with an online television system with a super-sharp camera, a touch screen computer displaying information at the trial panel, a projector, voice-to-text conversion system displayed on the screen for the court attendees to follow and use as a court record, and electronic media arrangement at the seats of the Judge, prosecutor and lawyer that provides image sharing functions from wireless devices such as tablets and mobile phones.

The method of organizing online court sessions is as follows:

*For the trial of criminal cases:* Online trial of criminal cases aims to ensure safety and save costs and human resources in escorting defendants, especially dangerous defendants and those in detention camps far from the Court headquarters. Detention camps have courtrooms managed by the detention camp management agency, fully equipped with electronic devices such as sound systems, screens, and video conferencing systems connected to the Court's courtroom. The display screen equipped in the detention camp's courtroom is very large to create the feeling for the defendant as if he were standing before the jury at the Court headquarters. If the witness or victim does not attend the trial in-person, the Court will provide an account and password so they are able to use the computer connected to the online trial system.

*For simple civil and business-commercial cases:* Most simple civil and business-commercial cases are tried online by the Courts. The judge will create an “electronic courtroom”, providing access to the courtroom so that the plaintiff and defendant can connect to the Internet and attend the trial.

## **2. Singapore**

All courtrooms at the Supreme Court are equipped with the necessary infrastructure to facilitate virtual hearings. Lawyers can also use personal computers to attend virtual hearings, access electronic case files, and conduct their business through the use of appropriate technology.

All courtrooms are equipped with telecoil hearing aids to assist those with some degree of hearing impairment in attending court.

*Mobile Infocomm Equipment:* Mobile Infocomm equipment is provided in all courtrooms. These include 3D object magnification systems, hard copy documents, and 65-inch high-definition televisions with interactive displays for users to annotate content clearly.

*Video Conferencing Equipment:* Video conferencing equipment is available in the courtroom for vulnerable witnesses or witnesses from overseas who are not present at the trial to give testimony. Lawyers can connect their personal computers to the audio-visual system to display evidence on computer screens and projector screens.

## **3. Courtrooms of the Federal Court of Australia**

The Court has technology and equipment in the courtroom for each Judge, such as online conferencing equipment, document cameras, wifi; computers, etc. The online courtroom also has a system of online tools to support the proceedings, such as online Court records and document access tools such as the Commonwealth Court portal and the federal law search page.

## **4. United States**

To ensure that everyone's rights are protected and online proceedings are effective, state courts in the U.S. tend to consider the following key factors when making decisions about courtroom technology, online hearing platforms, and whether to allow online hearings:

- The technology and platform must be easy to use for the Court and litigants.
- Certain technical requirements must be met. The online hearing platform must allow simultaneous interpretation, captioning, and recording of the hearing. It must meet other accessibility requirements and allow viewing and exchange of documents.
- The courtroom must have sufficient technology to support the sharing of evidence in online proceedings, so the parties can view photographic evidence or documents presented in a remote format.

## **V. Record-keeping requirements**

After the trial, the Court must ensure that the online trial records are kept securely, monitor compliance with data security regulations, and protect personal information.



**United Nations Development Programme**

Bangkok Regional Hub

3rd Floor United Nations Service Building

Rajdamnern Nok Avenue, Phranakorn

Bangkok 10200 Thailand

[www.asia-pacific.undp.org](http://www.asia-pacific.undp.org)